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No. _____

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

H. ALVA BRUMFIELD, III,

Petitioner,

verses

THE MISSISSIPPI STATE BAR ASSOCIATION,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. May a state supreme court, sitting as bar disciplinary tribunal base its decision as to the quantum of the disciplinary sanction to be imposed on the absence of any showing of contrition or other indicia of regret on the part of an attorney in a non-bifurcated disciplinary hearing?

II. Was the Mississippi Supreme Court's application of the Mississippi State Bar Rules of Discipline violative of the Equal Protection and Due Process clauses of the United States Constitution in that the sanction of disbarment was arbitrarily and capriciously imposed against an out of state attorney?

III. May a state supreme court sitting as trier of fact disbar an attorney based upon a legal theory unpleaded, and expressly waived at the evidentiary hearing?

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No. _____

IN THE
Supreme Court of the United States

OCTOBER TERM, 1986

H. ALVA BRUMFIELD, III,

Petitioner

versus

THE MISSISSIPPI STATE BAR ASSOCIATION,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

Petitioner H. Alva Brumfield, III, respectfully petitions this Court to issue a writ of certiorari to the Supreme Court of the State of Mississippi.

REFERENCES TO OPINIONS

The opinion of the Supreme Court of the State of Mississippi are reproduced in the Appendix A at pages A-1–A-21 and is reported at 497 So.2d 800 (1986).

JURISDICTION

The judgment of the Mississippi Supreme Court was entered on the 10th day of September, 1986, and rehearing was denied on December 3, 1986. This Court has jurisdiction under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

The pertinent constitutional provisions and the court rules at issue are reproduced at pages A-37 through A-38 of Appendix D.

STATEMENT OF THE CASE

H. Alva Brumfield, III, your Petitioner herein, graduated from the University of Mississippi Law School in 1965. In accordance with the provisions of the then existent "diploma privilege" he became licensed to practice law in the State of Mississippi. Following his graduation he returned to his home in Baton Rouge, Louisiana, and went into practice with his father in a very successful personal injury practice.

Brumfield's Grandmother, "Dabba" Brumfield, owned certain real property located within the State of Mississippi. This property included a parcel of 36 acres located in Walthall County, Mississippi. When Dabba Brumfield died she left this land to her children, consisting of Brumfield's father and his four brothers and sisters. Subsequently, H. Alva Brumfield, II (your Petitioner's father) died and his one-fifth (1/5) interest was devised in equal shares to your Petitioner, his brother, William P. Brumfield and his sister, Julia Simms. In 1979 the property was titled as follows:

Georgia Rae B. Davis - (petitioner's aunt) - one-fifth (1/5) interest

Lucy B. Handley - (petitioner's aunt) - one-fifth (1/5) interest

Elizabeth B. Allemandi (petitioner's aunt) - one-fifth (1/5) interest

Billy Brooks Brumfield - (petitioner's aunt) - one-fifth (1/5) interest

Julia B. Simms (petitioner's sister) - one-fifteenth (1/15) interest

William P. Brumfield (petitioner's brother) - one-fifteenth (1/15) interest

H. Alva Brumfield, III - one-fifteenth (1/15) interest

Brumfield had never seen the land in question and learned of its existence only as a result of an ancillary probate proceeding instituted in the State of Mississippi for his father's estate.

In the summer of 1979, Brumfield received a telephone call from one Dr. John Barrett, a resident of Tylertown, Mississippi. Barrett owned approximately two hundred three (203) acres of land adjoining the thirty-six (36) acres in question. Barrett, aware of considerable seismographic activity in the area, made the decision to attempt to acquire the thirty-six (36) acres belonging to Brumfield, his brother, his sister and his aunts.

Barrett contacted Brumfield in 1979 and informed him that he wished to purchase the land "for his sons" so that they could have a place to "build their homes". Brumfield informed Barrett that he was ignorant to the land values in the area and asked what the land was worth.

Brumfield testified that Barrett offered $450.00 per acre for the 36 acres if Barrett could obtain one hundred (100%) percent of the fee simple interest. Barrett testified at the civil trial and at the hearing before the Complaints Tribunal that he offered Brumfield $700.00 per acre.

Brumfield wrote to the one aunt whose address he had, conveyed the offer of $450.00 per acre, and suggested that she get in touch with the other aunts to determine if they were interested in selling the property.

Several days later Brumfield learned from his sister, Julia Simms, that as a result of a federal tax audit, Ms. Simms would not be in a position to convey her one-fifteenth (1/15) interest in the land. In spite of the fact that this resulted in the family's inability to meet the terms of Barrett's offer to purchase the entire fee, Brumfield nevertheless sent deeds conveying the property to himself to each of his aunts for their execution together with his own personal check for their portion of the purchase price of $450.00 per acre.

Some months following this transaction, Brumfield was approached by an oil and gas company and executed an oil and gas lease on the property he had purchased from his aunts. When Brumfield's aunts discovered the lease, they proceeded to file suit in Chancery Court in Walthall County, Mississippi. This case was decided in favor of the aunts and the Chancery Court ordered the reconveyance of the property from Brumfield to the aunts. On appeal to the Mississippi Supreme Court, this decision was affirmed without opinion.

Disciplinary proceedings were instituted against Brumfield on July 10, 1984, with the filing of a formal complaint on behalf of the Mississippi State Bar against H. Alva Brumfield, III, your petitioner herein, demanding that the Supreme Court of the State of Mississippi impose disciplinary sanctions against Brumfield for having violated the Mississippi Code of Professional Responsibility, Disciplinary Rule 1-102(A)(1), (4) and (6). (App. E p. A-40) Upon the filing of the formal complaint, and pursuant to Rules of Discipline

for the Mississippi State Bar, (App. F pp. A-42–A-60) the Mississippi Supreme Court appointed a Complaint Tribunal for the purpose of hearing evidence.[1]

Following the receipt of evidence by the tribunal, including the depositions and previous testimony of Brumfield's aunts from the prior Chancery Court proceeding filed by the aunts to recover the property, the tribunal issued its judgment on January 24, 1985, finding Brumfield to have been guilty of "unprofessional and unethical conduct evincing unfitness for the practice of law" and ordering Brumfield's suspension from the practice of law for a period of ninety (90) days. [App. A(2) p. A-28]

Aggrieved of this ruling, Brumfield perfected his appeal to the Mississippi Supreme Court pursuant to Rule 9. After review of the record *de novo* as required by said Rule, the Supreme Court issued its opinion upholding the tribunal's adjudication but reversing the Tribunal's 90 day suspension and instead permanently disbarring Brumfield from the practice of law in the State of Mississippi. The opinion indicated that part of the reason for the increased sanction imposed by the Supreme Court, as opposed to the tribunal, was the "lack of contrition" shown by Brumfield for his actions. [App. A(1) at p. A-21]

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1 **The disciplinary procedures adopted by the Mississippi Supreme Court, provides that the Supreme Court itself sit as the trier of fact in such cases. See Rule 7. The complaint tribunal merely acts as a fact gathering adjunct of the Supreme Court. See *Levi v. Mississippi State Bar*, 436 So.2d 781, 782 (Miss.1983). The Mississippi Supreme Court exercises original jurisdiction over all factual and legal determinations and reviews the evidence gathered by the tribunal *de novo*. See *Konigsberg v. State Bar of California*, 353 U.S. 252, 77 S.Ct. 722; 1 L.Ed.2d 810 (1957).**

Feeling that Brumfield's constitutionally protected rights under the 5th, 6th, 8th and 14th Amendments of the United States Constitution have been infringed, Brumfield asks this Court to issue a Writ of Certiorari to the Supreme Court of the State of Mississippi and review the federal questions presented by the Mississippi Supreme Court's action.

Stage of Proceeding At Which Federal Questions Were Raised

It is important to note, for the purpose of ascertaining the stage of the proceeding at which the various federal questions presented by this petition for Writ of Certiorari were raised, that the proceeding from which the Writ is sought was an *original* proceeding before the Mississippi Supreme Court. *See e.g. Konigsberg v. State Bar of California*, 353 U.S. 252, 77 S.Ct. 722; 1 L.Ed.2d 810 (1957). The Complaints Tribunal acts merely as a fact-finding adjunct of the Supreme Court. The Mississippi Supreme Court reviews the entire record *de novo* and enters its own findings of fact and conclusions of law. *See Levi v. Mississippi State Bar*, 436 So.2d 781, 782 (Miss. 1983).

I. May a state supreme court, sitting as bar disciplinary tribunal, base its decision as to the quantum of the disciplinary sanction to be imposed on the absence of any showing of contrition or other indicia of regret on the part of an attorney in a non-bifurcated disciplinary hearing?

This question was raised for the first time in the Petitioner's Petition for Rehearing before the Mississippi Supreme Court. (See App. G at page A-63). The question was timely and properly raised at this time as a result of the fact that until the Supreme Court issued its Order of September 10, 1986, Brumfield's failure to express contrition was not a ripe issue. In said petition for rehearing, Brumfield specifically

requested the opportunity to present evidence in mitigation of the sanction of disbarment. (See App. G at page A-63). The Petition for rehearing was denied without opinion. (See App. B at page A-33).

II. Was the Mississippi Supreme Court's application of the Mississippi State Bar Rules of Discipline violative of the Equal Protection and Due Process clauses of the United States Constitution in that the sanction of disbarment was arbitrarily and capriciously imposed against an out of state attorney?

This question was raised in the Petition for Rehearing following the Supreme Court's Order vacating the ninety (90) day suspension and entering its Order of permanent disbarment. (App. A-1 at p. A-21)

III. May a state supreme court sitting as trier of fact disbar an attorney based upon a legal theory unpleaded, and expressly waived at the evidentiary hearing?

The question as to the lack of notice of the agency theory employed by the Supreme Court was raised for the first time on petition for rehearing, (App. G at p. A-63) following the Court's Order of September 6, 1986, basing its finding of a fiduciary relationship upon Brumfield's agency for his aunts. (App. A-1 at p. A-17) The Mississippi Supreme Court's Order of September 6, 1986, was the first time such an issue appeared in any of the pleadings herein.

REASONS FOR GRANTING THE WRIT

I

THE DECISION OF THE MISSISSIPPI SUPREME COURT IN IMPOSING THE SANCTION OF DISBARMENT BASED UPON, *INTER ALIA* A "LACK OF CONTRITION" IS VIOLATIVE OF THE RIGHTS OF DUE PROCESS TO A HEARING BEFORE A FAIR AND IMPARTIAL TRIBUNAL.

Certiorari should be granted in the present case because the decision of the Supreme Court below and its procedure in arriving at the sanction of disbarment cannot be reconciled with the notions of due process and equal protection which this Court has held are requisite in attorney regulatory and disciplinary matters. *Re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117, clearly enunciates the principle that attorney disciplinary proceedings are quasi-criminal in nature and that the due process requirements incumbent upon state courts in criminal proceedings have like application in matters of bar discipline. The Mississippi Supreme Court, in its application of Rules of Discipline for the Mississippi State Bar (App. F p. A-58) sits simultaneously as trier of fact and sanctioning authority. In ruling on the case below, the Court indicated that one of the controlling considerations in its decision to vacate the tribunal's sanction of a ninety (90) day suspension and order Brumfield permanently disbarred was Brumfield's "lack of contrition". [App. A(1) p. A-21].

Requiring a defendant to express contrition for his actions while simultaneously presenting a full and vigorous assertion of that attorney's rights in a quasi-criminal disciplinary proceeding, is clearly inconsistent with the due process

requirement for a fair and impartial hearing. Cf. *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968). It is impossible for an attorney to fully and completely prepare and present his defense to charges lodged against him in such bar disciplinary procedures if by doing so he forecloses his ability to present all possible factors in mitigation of potential sanctions to be imposed.

The opinion and order of the Mississippi Supreme Court indicated that the decision to permanently disbar Brumfield from the practice of law in the State of Mississippi was based upon several integral considerations including its finding that:

> Moreover, we find a dismaying absence of contrition of the part of Brumfield, no recognition whatever by him of any wrong doing.

[App. A(1) p. A-21].

As this Court will be able to tell from a careful perusal of the record, a heated factual dispute as to the actions which transpired between Brumfield, Dr. Barrett and Brumfield's aunts, took place in both the original civil proceedings as well as in the bar proceedings. Brumfield was entitled to present his version of those factual proceedings to the Mississippi Supreme Court as the ultimate trier of fact. Nevertheless, if contrition is a required element of mitigation, Brumfield's vigorous assertion of his right to put forth a defense resulted in the unavoidable presentation of an aggravating circumstance (lack of contrition) considered by the Court in its decision increasing the quantum of disciplinary sanctions imposed.

Brumfield's Petition for Rehearing requested that he be permitted to put on evidence relating to his character and

fitness to practice law in mitigation of the ultimate professional sanction of disbarment. This request was denied. In the absence of an opportunity to present such evidence *subsequent to* any adjudication of Brumfield's guilt, it is apparent that your petitioner was denied the right either to vigorously assert his defense, or to present evidence in mitigation of his sentence.

Until the rendition of a final adjudication on the factual basis underlying the claim for disciplinary sanctions, there is no appropriate forum presented by the Mississippi Rules of Discipline for the presentation of both evidence and testimony relating to the long years in which Brumfield has engaged in the practice of law in a manner which has been painfully scrupulous and denoted by an unswerving sense of honesty and integrity. A decision to disbar either Brumfield or any other attorney, cannot be rendered until such time as either Brumfield or any other attorney has an opportunity to fairly present factors in favor of the mitigation of the sentence. Such an opportunity must be presented in such a fashion so as not to constitute an admission of guilt prior to such a factual determination.

In view of the quasi-criminal nature of bar disciplinary proceedings, analogy may be made to the requirements imposed by the decisions of this Court in cases involving the death penalty requiring the bifurcation of the guilt and sentencing phase of death penalty cases. It is respectfully submitted that in consideration of the fact that bar disciplinary proceedings such as Brumfield's, the potential death of a legal career warrants similar due process considerations.

Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) recognized the need for such a fiburcated hearing in death penalty cases when jury was serving as both trier of fact and sentencer. Quoting from the comments from the

Model Penal Code, this Court cited with approval the recognition that "[t]his is the analogue of the procedure in the ordinary case when capital punishment is not in issue; *the Court conducts a separate inquiry before imposing sentence.*" *Id.* at 192.

The resulting dilemma with which your Petitioner was confronted as a result of the Mississippi Supreme Court's procedure for handling attorney discipline is similar to that wought to be avoided in *United States v. Jackson*, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed.2d 138 (1968). Holding unconstitutional a statutory provision providing for a maximum penalty of life imprisionment for a plea of guilty and a maximum death penalty if a defendant chose trial, the *Jackson* court held that:

> [t]he inevitable effect of any such provision is, of course, to discourage the assertion of the 5th Amendment right not to plead guilty and to deter the exercise of the 6th Amendment right to demand a jury trial. If the provision had no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who chose to exercise them, then it would be patently unconstitutional.

Id. at 581, 88 S.Ct. at 1216.

The requirement that an attorney express contrition during a guilt phase as a condition for mitigation of sentence clearly constitutes a denial of due process. Requiring such expressions of contrition as a factor in the sentencing of an attorney to excommunication and banishment from the brotherhood of the bar is to deny him the right to a fair trial at which he may assert his innocence, free of the chilling effect such assertions may have on his potential punishment.

Requiring that as a part of a person's defense, he confess (whether truly or no) guilt as to the factual allegations, is to require that attorney to surrender the right to a hearing before a fair and impartial tribunal. The Mississippi Supreme Court's ruling exacted just such a requirement from Brumfield. His failure to prostrate himself before the Complaints Tribunal and the Mississippi Supreme Court and beg forgiveness for his actions while simultaneously asserting his innocence resulted in his permanent disbarment.

A bifurcated hearing, with the first phase on the question of guilt or innocence as to the factual allegations contained in a bar complaint and then and only then upon the aggravating or mitigating factors to be considered by the Court in the imposition of disciplinary measures is constitutionally required. Such a procedure is the only way of guaranteeing Brumfield, or any other attorney, even *de minimis* due process.

This Court should grant certiorari to review the sentencing procedure followed by the Mississippi Supreme Court in Brumfield's case.

II

THE DECISION BELOW WAS ARBITRARY AND CAPRICIOUS IN THAT THE SANCTION IMPOSED AGAINST A NON-RESIDENT OF THE STATE OF MISSISSIPPI WAS WHOLLY INCONSISTENT WITH PREVIOUS SANCTIONS IMPOSED IN SIMILAR CASES.

Brumfield's disbarment by the Mississippi Supreme Court constituted a denial of equal protection in that the sanction

of disbarment which was imposed against Brumfield, a non-resident of the State of Mississippi, was clearly inconsistent with the previous application of the sanction of disbarment in previous cases considered by the Mississippi Court.

Brumfield is a resident of the State of Louisiana. The overwhelming portion of his practice in in Louisiana. The only reason he holds a license to practice law in the State of Mississippi is by virtue of having graduated from the University of Mississippi School of Law and the then existent "diploma privilege".

The Mississippi Supreme Court's decision to disbar Brumfield is clearly inconsistent with its previous decisions involving disbarment. An analysis of the decision of the Mississippi Supreme Court in Bar discipline cases, examining particular conduct of attorneys and the decisions as to the imposition of disciplinary measures reveals the imposition of disbarment has been exclusively reserved for those situations when an attorney was found guilty of the perpetration of a felony or for some other type of *indictable* offense such as blackmail or embezzlement. Particularly revealing is the recent decision of the Mississippi Supreme Court in *Mississippi State Bar v. Strickland*, 492 So.2d 567 (Miss. 1986) wherein the Mississippi Supreme Court held that

> Strickland, while acting within the bounds of the attorney client relationship "took money belonging to estates he represented and converted it to his own use. This involved moral turpitude . . . "

Id. at 571.

For such an offense involving moral turpitude, Strickland had his licensed suspended for *three years*. The factual situation underlying Brumfield's disbarment clearly has no rational relationship whatsoever to the ultimate imposition of the penalty of *permanent* disbarment when compared to the underlying factual basis and sanctions imposed in prior disciplinary cases.

III

THE DECISION BELOW RESULTED IN A DENIAL OF DUE PROCESS IN THAT THE PETITIONER WAS GIVEN NO NOTICE OF THE LEGAL BASIS UPON WHICH DISCIPLINARY SANCTIONS WERE ULTIMATELY IMPOSED.

To the extent that the language of the Mississippi Code of Professional Responsibility permits, the Code is unconstitutionally vague in that it does not provide sufficient notice to an attorney of proscribed conduct. *In Re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968). It is important to note that the Mississippi Supreme Court's opinion held that the basis for adjudicating Brumfield to be in violation of the Code of Professional Responsibility was his violation of a *fiduciary* relationship deriving as a result of *agency* between Brumfield and his aunts. [App. A(1) page A-17] Such a ruling by the Mississippi Supreme Court was clearly violative of Brumfield's due process right to adequate notice of the charges of which he stood accused. An examination of the formal complaint filed against Brumfield reveals no allegation of the existence of an agency relationship between Brumfield and his aunts. (App. 1 page A-104–

A-114). At the hearing before the complaints tribunal[2] counsel for the State Bar Association stated that *the only grounds* being presented by the State Bar as establishing a fiduciary relationship was the existence of the blood relationship between Brumfield and his aunts. (App. H pp. A-99–A-102). The question of Brumfield's agency for his aunts was never presented at any time prior to the Mississippi Supreme Court's opinion adjudicating the existence of such an agency relationship. Brumfield neither had notice nor opportunity to present evidence on the question of his agency to his aunts. In view of his aunts' specific and categorical denial that Brumfield was serving in a capacity as attorney or other fiduciary relationship, (App. J pp. A-115–A-116) the denial to Brumfield of the right to notice of the nature of his violation and the basis therefore, together with the denial of an opportunity to present evidence on that specific question constitutes a denial of due process. Such a blindside approach to attorney discipline has been proscribed by this Court in numerous cases. *Re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed.2d 117 (1968), *Re Bradley*, 7 Wall. 364, 19 L.Ed. 214 (1868); *Bradley v. Fisher*, 13 Wall. 335, 20 L.Ed. 646 (1871); *Re Robinson*, 19 Wall. 505, 22 L.Ed. 205 (1873). Cf. *Zauderer v. Office of Disciplining Counsel of the Supreme Court*, _____ U.S. _____, 105 S.Ct. 2265, 18 L.Ed.2d 652 (1985).

This Court should grant its writ of certiorari to review the unconstitutional approach by the Mississippi Supreme Court in basing a decision of disbarment upon grounds hither to unplead at any time in the proceedings.

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2 It should be remembered that the hearing before the tribunal was the *only* opportunity that Brumfield had to present any evidence on the charges leveled at him for consideration by either the tribunal *or by the Mississippi State Supreme Court.*

CONCLUSION

It is respectfully requested that in view of the foregoing this Court issue its writ of certiorari to the Supreme Court of the State of Mississippi and consider the constitutional challenges to that Court's order of disbarment against H. Alva Brumfield, III.

RESPECTFULLY SUBMITTED,

H. ALVA BRUMFIELD, III

BY: RUSHING AND GUICE

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Counsel of Record

APPENDICES

A(1) through J

APPENDIX A(1)

IN THE SUPREME COURT OF MISSISSIPPI

MISC. NO. 173

H. ALVA BRUMFIELD, III

versus

MISSISSIPPI STATE BAR ASSOCIATION

DECIDED September 10, 1986

BEFORE HAWKINS, P. J., PRATHER AND SULLIVAN, JJ. HAWKINS, PRESIDING JUSTICE, FOR THE COURT:

H. Alva Brumfield, III, a Louisiana resident admitted to the Mississippi Bar, has appealed a decision of a complaint tribunal suspending him from the practice of law in this State for a period of ninety days. The Mississippi State Bar has cross-appealed complaining the conduct of Brumfield justifies disbarment.

We find no merit in Brumfield's appeal. We do find merit in the Mississippi State Bar's appeal and direct Brumfield be permanently disbarred.

FACTS

Julie Bertha Pigott Brumfield died intestate in 1964, the fee simple owner of 36 acres of land in Walthall County. In her family Mrs. Brumfield had the nickname "Dabba." She left surviving her as her sole heirs-at-law three daughters and two sons, namely: Elizabeth Brumfield Allemandi

(Mrs. Allemandi), Mrs. Lucy Brumfield Handley (Mrs. Handley), Georgia Rae Brumfield Davis (Mrs. Davis), Bert C. Brumfield and H. Alva Brumfield II. Among the children Mrs. Allemandi was known as "Lib," Alva Brumfield as "Al," and Bert Brumfield as "Bert." Alva Brumfield was a practicing attorney in Baton Rouge, who died in 1974. His three children were William P. Brumfield, H. Alva Brumfield, III, and Julia Scott Brumfield Simms, who, upon his death inherited his one-fifth interest in the realty. Bert Brumfield, resident of Baton Rouge, died in January, 1979, leaving as his sole heir-at-law his widow Billie Scott Brooks Brumfield. William P. Brumfield and Alva Brumfield, III, practiced law together in Baton Rouge. Among the family Alva Brumfield, III, had the nickname "Beau."

Thus, in August, 1979, the three daughters and Bert Brumfield's widow, Mrs. Billie Brumfield, each owned an undivided one-fifth interest in the realty, and the three children of Alva Brumfield II each owned an undivided one-fifteenth interest in the land.

During their lifetimes the two sons of Mrs. Julia Brumfield apparently paid the taxes on the realty. None of the daughters had anything to do with the land.

John Clifton Barrett, Jr., was a dentist in Tylertown. On August 2, 1979, he made a telephone call not exceeding one minute to Alva Brumfield, III, and on August 6, 1979, he made a three minute telephone call to Brumfield. In one of these conversations he offered Brumfield $700 per acre for the land. Brumfield told him he would take the matter under consideration and would talk to the others interested. In his direct examination before the Tribunal, Barrett testified Brumfield told him he would "take it under consideration and advise his clients." On cross-examination he conceded he was "not particularly familiar with the proper legal

terminology of client or representative or whatever in this context, but I was under the impression he was representing himself and others." [Vol. II, p. 201]

On August 10 Barrett telephoned Brumfield at which time they talked for several minutes. Brumfield informed Barrett he had been unable to contact the other interested parties.

On August 6 Brumfield wrote the following letter to Mrs. Allemandi:

August 6, 1979

Mrs. Elizabeth B. Allemandi
5657 Byron Nelson Drive
Arlington, TX 78550

Dear Lib:

I received an offer for the property which Dabba owned in Walthall County in which you own a 1/5 interest for $450.00 an acre, or $3,240.00 cash.

We discussed this at the time of Bert's funeral, but I neglected to follow through on it.

I told Billie Scott I would use Al's portion to pay Bert's funeral expenses, which I will do.

I would think that we should sell the property. If this is agreeable with you, I would appreciate your calling me. I do not think my address for Lucy and Georgia Rae is good. If you could ask them and advise me, I will take care of the documentation.

I am sorry I have not written sooner but Rosemary and two of the boys have been very sick and I have been quite busy. I enjoyed your's [sic] and Paul's visit but am sorry it had to be under tragic circumstances. Let me know when ya'll are coming back through on the way to Florida and please stay overnight with us.

Love,

s/Beau

On August 13 Brumfield wrote Mrs. Allemandi the following letter:

August 13, 1979

Mrs. Elizabeth B. Allemandi
5657 Byron Nelson Drive
Arlington, TX 78550

Dear Lib:

Rosemary said ya'll would be through at Christmas. We may spend Christmas at Gulf Shores, but in any event, you can lay over on the beach or at the house.

I enclose my check to you for $3240.00. Please take the Warranty Deed and execute the same before the appropriate notary and return to me. I don't have the right address for Lucy or Georgia Rae. If you would furnish that to me, I will forward them their documents and checks.

Love,

s/Beau

As he stated in the letter, he enclosed his personal check for $3,240, dated August 14, payable to Mrs. Allemandi, and proposed warranty deed for her to sign.

On August 18, 1979, Mrs. Allemandi wrote Brumfield the following letter in longhand:

Dear Beau,

I received the check and documents and will return them to you as soon as I go to an attorney. I just have one question if the sale was divided by 5 – does Billie Scott get Bert's 1/5? We certainly appreciate your taking Al's share to defray Bert's funeral expenses. If Billie Scott doesn't receive that 1/5, shouldn't it be divided among the remaining heirs?

Listed below are the addresses:

Mrs. W. M. Handley (Lucy)
808 Alba Drive
Orlando, Florida 32804

Mrs. L. L. Davis (Georgia)
327 Rolling Hills Drive
Conroe, Texas 77301

The Handley's [sic] are going to see Tuffy next month in Belgium. He is now a Lt. Col.

Thanks again for every thing.

Love to all,

s/Lib

On August 27 Mrs. Allemandi executed the warranty deed conveying her entire interest in the realty to Brumfield, with no reservations or exceptions, which she mailed to him.

On August 27 Brumfield wrote the following letter to Mrs. Davis:

August 27, 1979

Mrs. L. L. Davis
327 Rolling Hills Drive
Conroe, Texas 77301

Dear Georgia Rae:

I understand Lib has talked to you concerning the selling of your one-fifth interest in the land Dabba left in Mississippi. I enclose my check to you for $3,240.00 and a Warranty Deed, and I would ask that you execute the Deed before a Notary Public and then send it to me.

I get to Houston occasionally and would like to come by and see everyone. I was there several months ago and thought I saw Leroy. I went up to say hello and found out it was not him but an IRS agent who was very affronted that he was being approached and greeted on the street. I'll probably get my taxes audited as a result thereof. I certainly would like to see everyone the next time around.

Love to all

s/Beau

In his letter Brumfield enclosed a personal check for $3,240.00 and a proposed warranty deed. On August 30 Mrs. Handley executed the deed.

On September 24 Mrs. Billie Brooks Brumfield executed a warranty deed for her entire interest, for which she received a personal check from Brumfield dated the same date for $1,027.68. In this payment Brumfield deducted Bert Brumfield's funeral expenses due Ravenhorst Funeral Home in Baton Rouge in the amount of $2,212.32, which he had paid by check dated August 22, 1979.

Just as in Mrs. Allemandi's warranty deed, the others conveyed their entire interest in the realty with no reservations or exceptions. All deeds were filed for public record in the chancery clerk's office of Walthall County on September 26, 1979.

On October 16, 1979, Brumfield executed an oil and gas lease on the realty to B. P. Tillery of Laurel, for the bonus rental of $500 per acre. On the same date his sister and brother likewise each executed an oil and gas lease to Tillery. Preceding in the execution of these leases there had been telephone conversations between Tillery and Brumfield.

On November 30, 1979, following his employment to make an appraisal of the property by Brumfield, Doug Rushing of Tylertown wrote Brumfield the land was worth $1,000 per acre, including the timber thereon, which he valued at $16,000.

Mrs. Allemandi and her husband Paul had their suspicion aroused, so their Texas attorney contacted Dan Wise, attorney in Hattiesburg. Wise made an investigation, contacted Tillery, and on November 13, 1979, filed a bill of complaint on behalf of Mrs. Allemandi and Mrs. Handley in the chancery

court of Walthall County to set aside the deeds of Brumfield, establish a constructive trust between Brumfield and the grantors as to any oil and gas proceeds, and for an accounting. On November 29, 1979, an amended bill was filed by all three sisters, asking for the same relief as the original bill. Both bills charged Brumfield with fraud in procuring the deeds.

Prior to trial all the grantors tendered the purchase price Brumfield had paid them for the land.

Following a trial, the chancellor rendered a final decree on November 17, 1981, finding there was a fiduciary relationship between Brumfield and the four grantors, and that he had defrauded them, and directing that Brumfield reconvey the interest acquired from the three sisters and Mrs. Billie Brooks Brumfield back to them, and awarded judgment to each of them against Brumfield for $3,600.00 totaling $14,400, the amount Brumfield had received in bonus rental under the oil and gas lease for their interest.

Brumfield appealed to this Court, and we affirmed without an opinion on September 7, 1983.

On July 11, 1984, the Mississippi State Bar filed a complaint against Brumfield. Although Brumfield is a Louisiana citizen, he held a license to practice law in Mississippi, and was a member of this State's Bar.

The complaint charged violation of Disciplinary Rules of the Code of Professional Conduct DR 1-102 (A) (1, 4 and 6) in engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, or other conduct adversely affecting his fitness to practice law.

Brumfield answered August 3, 1984, attaching as exhibits portions of the depositions of Mrs. Allemandi, Mrs. Handley, Mrs. Davis and Mrs. Billie Brumfield given in the previous trial.

On November 2, 1984, Brumfield filed a motion in limine to exclude the appeal record in the chancery court case between him and his aunts, and to exclude the depositions of the aunts, given in preparation of trial in the chancery court.

In the argument on the motion, complaints counsel responded that he had no subpoena powers, that he could not compel the aunts to testify, that he had talked with Mrs. Brumfield and Mrs. Handley, who did not want to give any deposition.

The Tribunal was of the opinion Miss. Code Ann. §13-1-111 (1972) did not authorize the use of the depositions. After considerable argument, the Tribunal did rule that Miss. Code Ann. §99-9-33 authorized the Tribunal to compel these witnesses to attend the hearing, and directed complaints counsel to prepare an order securing their attendance on December 17.

Brumfield's counsel filed a written objection to this procedure. Brumfield also filed a petition in this Court for a writ of prohibition to prevent compelling the attendance of these witnesses, which we denied December 12.

Prior to hearing, however, the Tribunal ruled that the Bar could introduce the prior testimony from the chancery court suit.

At the hearing Barrett and Dan Wise, the attorney who represented the aunts, testified, and the Bar introduced excerpts from the prior testimony of Mrs. Allemandi, Mrs. Davis, Mrs. Handley and Mrs. Billie Brumfield taken from

the chancery court trial transcript. In his defense Brumfield and John Jeffries, an attorney from Laurel, testified. Jeffries is a lifelong friend of Brumfield's and one of the authorities who represented Brumfield in the chancellory court action.

Brumfield said he had never represented his aunts in any professional capacity, and there was virtually no family relationship between these heirs. He said that he had never seen the land in Walthall County, denied that Barrett offered $700 per acre, and claimed he had only been offered $450 per acre.

Brumfield testified that when his uncle Bert Brumfield died, his wife Billie Scott was an alcoholic, and did not make funeral arrangements. So Brumfield made the arrangements and guaranteed payment of the bill. He said that at the funeral he had discussed payment of the funeral bill with Mrs. Brumfield and Mrs. Allemandi. He claimed they reached an understanding that the land in Tylertown would be used to pay the bill, first using Brumfield's and his brother's portion, and if that did not cover it, then whatever share Bert received would make up the difference.

Brumfield testified that following receipt of the offer from Barrett he communicated it to Mrs. Allemandi. He further testified that when he discussed the sale with his sister, Mrs. Julia Simms and her husband, he learned that Mr. Simms was having some trouble with the Internal Revenue Service and she did not want to sell at that time. According to Brumfield, he reported this to Barrett, who got quite upset, and told Brumfield he did not want to purchase the land unless he could get it all. Brumfield said he told Barrett the problem was only temporary, and that his sister would be able to sell in a short while, but this did not satisfy Barrett.

Brumfield further related that Mrs. Allemandi's husband Paul was an alcoholic who stayed intoxicated and had lost his job. Following Brumfield's communication of Barrett's offer to Mrs. Allemandi, Brumfield claimed that Paul kept after him to sell the land so they could get some money. Because of this, Brumfield said he went ahead and bought the land himself to relieve the financial plight of the Allemandis, and he paid the heirs.

Brumfield testified that he had made a check payable to Mrs. Billie Scott Brumfield for her full share, $3,240, but when she came in on September 4 to sign the deed and get the check she was so drunk she threw up and could not sign her name.

According to Brumfield, Mrs. Brumfield came back on September 24 and told him:

> Beau, it's not fair that you pay the funeral home and give me mine. You are out of that money. Wait and give me mine when you get it all back from Dr. Barrett. No, it's not fair to you."

He testified that was why he then gave her a check for $1,027.68, which was her share less the funeral bill.

Brumfield testified his intention was to purchase the land for the benefit of all the heirs, but because of a threat from Wise he kept it. He testified (R.438):

> Because Mr. Dan Wise told my attorneys that if I didn't settle that lawsuit he would get me through the Mississippi State Bar Association and disbar me. I took that as a personal and professional affront, and a statement

from a blackmailer and a person that I would not trust, and I would not enter into any negotiations, personally or professionally, once a threat like that had been made. I felt my hands were completely tied. I could not compromise my personal standards or professional standards in dealing with that type of person.

As to the alleged threat, Jeffries testified:

Q. Were any conditions placed upon settlement or not settling that case by Wise?

A. I wouldn't call it conditions; I'd refer to it as a direct threat. He said if Beau does not settle the lawsuit and we win it, I will see he has trouble with the Bar.

As to any settlement negotiations and statements, Wise had testified:

Q. Did you have any settlement discussions with either Mr. Brumfield or John Jeffries during the pendency of this lawsuit?

A. There was an offer made after the suit was filed. I can't recall if it was with Mr. Jeffries or with you (Billy Guice); but there was a discussion of allowing – or requesting Mr. Brumfield to reconvey the property to my clients and allowing him to keep the net bonus money from the oil company so that they would be made whole and have their property back and ratify the leases, have him step

out of the position of the leases, let them step into his shoes in the lease, and let him keep the 18,000 that they had paid him; but that wasn't done. That's my recollection, and I can't recall whether you and I had that discussion or Mr. Jeffries.

MR. KILPATRICK (COMPLAINT COUNSEL): Would you restate that? I didn't – I don't believe I understood.

A. All right. The settlement offer that was made was for Mr. Brumfield to keep the $18,000 net per acre bonus money that was paid to him by the Pruet Production Company, and he was to reconvey fee simple title in this property back to his aunts. They would then ratify the leases and step into his shoes; and if the well were a good well, they would receive – I don't know if you'd say royalty. I don't do much oil and gas work – they would receive the proceeds from the well, if any; and they would be back in fees position of the timber, minerals, and the land. Mr. Brumfield would have maintained and kept the $18,000 net bonus that he had received from Pruet, and of course he would still have been a one-fifteenth owner with his sister and his brother William.

* * * * *

A. That's correct. They were willing to let him keep the $18,000 that he had received from Pruet.

* * * * *

Q. (Continuing by Mr. Guice) During the settlement discussions, do you recall discussing with Mr. Jeffries that if the case wasn't settled, a complaint would be filed with the Bar Association?

A. No, I don't; but I wouldn't deny doing it. I told Mr. Jeffries, you know, early on in the case that I thought the case ought to be settled and that I thought Mr. Brumfield had some problems in that standpoint; but I do not recall any statement that if it was not settled, there would be a complaint filed; but I do recall discussing with him that I felt like perhaps things hadn't been done like they should have been done. I wouldn't deny at all having discussed the possibility of a complaint.

On January 24, 1985, the Tribunal concluded that there was a confidential or fiduciary relationship between Brumfield and his aunts, and while there was no attorney-client relationship, he was still under an obligation not to commit the acts he had. The Tribunal concluded Brumfield had breached that duty and was guilty of violating DR 1-102 (A) (1, 4 and 6) of the Code of Professional Responsibility.

The judgment of the Tribunal was that Brumfield should be suspended from the practice of law for ninety (90) days.

Brumfield has appealed, assigning several errors. The Bar has cross-appealed assigning the Tribunal erred in not disbarring him.

LAW

Brumfield was charged with violating the following Disciplinary Rules of the Code of Professional Responsibility of the Mississippi State Bar:

> DR 1-102. MISCONDUCT
>
> (A) A lawyer shall not:
>
> (1) Violate a Disciplinary Rule
>
> * * * * *
>
> (2) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
>
> * * * * *
>
> (6) Engage in any other conduct that adversely reflects on his fitness to practice law.

In attorney discipline cases we do not sit simply as an appellate court. Not only do we review the findings and conclusions of the Complaint Tribunal, but we review all the evidence and law, following which we make such findings and conclusions of law as we find appropriate, based upon the whole record. Miss. Code Ann. §73-3-329 (5); Rule 9.4 of Rules of Discipline Mississippi State Bar; *Mississippi State Bar Assoc. v. Strickland*, Misc. Cause No. 131 (decided July 9, 1986, and not yet reported); *Clark v. Mississippi State Bar*, 471 So.2d 352, 357 (Miss. 1985); *Levi v. Mississippi*

State Bar, 436 So.2d 781, 783 (Miss. 1983); *Mississippi State Bar v. Phillips*, 385 So.2d 943, 944 (Miss. 1980); *Bramlett v. Burgin*, 382 So.2d 284, 285 (Miss. 1979).

We agree with the findings and conclusions of the law of the Tribunal that there was a fiduciary relationship between Brumfield and his aunts, and he was under a positive duty not to commit the acts he did, and that he violated the above rules of discipline. We find as a fact that Brumfield did engage in conduct involving dishonesty, fraud, deceit and misrepresentation, and conduct that adversely reflected upon his fitness to practice law.

Brumfield first assigns as error that the Tribunal erred in admitting testimony of his aunts from the chancery court action. While it appears Brumfield waived any objection thereto when he made as exhibits to his own answer portions of their testimony from the chancery court trial. 31A C.J.S. *Evidence*, §376 (1964); Griffith, *Mississippi Chancery Practice*, §572 (2nd ed. 1950); McCormick, *Evidence*, §260 (3rd ed. 1984). We need not to address this question because we find, aside from this testimony, that the record shows by clear and convincing evidence that he violated the above disciplinary rules.

The next three assignments of error go to the sufficiency of the evidence. Brumfield asserts that there was no attorney-client relationship and an attorney should not be disciplined for conduct outside his professional capacity; there was no clear and convincing proof of misconduct; and finally, the Tribunal erred as a matter of law in concluding there was a fiduciary relationship. We will address these assignments together.

It is clear that Brumfield acted on behalf of his aunts as their agent. The letters he wrote his aunts and his own testimony clearly establish that he purported and ostensibly undertook to act for everyone's common benefit. His duty to his aunts under the facts of this case was no different than an attorney to his client. In *Van Zandt v. Van Zandt*, 227 Miss, 528, 86 So.2d 466, 470 (1956), we stated:

> . . . the relationship of principal and agent, being confidential and fiduciary in character, demands of the agent the utmost loyalty and good faith to his principal. Any breach of this good faith whereby the principal suffers any disadvantage and the agent reaps any benefit is a fraud for which the agent will be held accountable, either in damages or by judgment precluding the agent from taking or retaining the benefits so obtained.

BRUMFIELD'S MISCONDUCT

We find the proof clear and unequivocal that Barnett offered Brumfield $700 per acre. We accept that finding of fact by the Tribunal, as the chancellor undoubtedly found in the chancery court cause. Brumfield represented to his aunts that he was offered $450 per acre by a third party, this was $250 an acre less than the actual offer. He thus acquired their four-fifths undivided interest in the 36 acres worth $20,160 for $12,960, thereby cheating them out of $7,200. All this aside the very suspicious circumstance indicates that Brumfield probably knew the land was worth far more than $700 an acre.

Brumfield conceded, as he had to, that shortly after he acquired his aunts' deeds he unquestionably knew the land was worth far more than $700 an acre. His excuse for not

doing the honorable thing and reconveying his aunts' interest back to them was a threat by Wise made to Jeffries that disciplinary action would be instituted against him through the Mississippi State Bar.

We find nothing in Jeffries' account of his conversation with Wise that showed any impropriety whatever by Wise. Even if there were, this is no justification whatever for Brumfield's refusal to take the only honorable step remaining for him after he had defrauded his aunts as he had: to reconvey their interest in the land to them, and pay them their proportionate share of the oil and gas bonus rental.

Nor do we find the reason he gave for not paying the funeral bill of his uncle's funeral out of his share, as he had promised Mrs. Allemandi to do, the least persuasive.

Regardless of this, Brumfield argues, because there was no attorney-client relationship between himself and his aunts, he is not subject to discipline. Brumfield overlooks the plain reading of DR 102 which specificaly proscribes *any* conduct involving dishonesty, fraud, deceit, or misrepresentation, or in any other conduct that adversely reflects on his fitness to practice law.

Integrity, honor and scrupulously fair dealing are the hallmarks of an attorney. What Brumfield did in this case was particularly relevant as to his fitness to practice law. Attorneys must be totally honest when handling their clients' affairs. That an attorney could do what Brumfield did to his own aunts, even though he may have had but slight acquaintance with some of them, evinces a dishonesty which varies completely with the integrity basic to the practice of law. We reject his contention that the boundary line of disciplining an attorney begins with the attorney-client relationship.

As we stated in *Rhodes v. Rhodes*, 420 So.2d 761 (Miss. 1982), an attorney should not be disciplined for misconduct out of his professional capacity unless such misconduct is of a serious nature, and tends to show him an unfit person to be an attorney. Brumfield's conduct does show him unfit to practice law.

We also stated in *Levi v. Mississippi State Bar*, 436 So.2d 781, 786 (Miss. 1983), that the disciplinary rules:

> . . . were not adopted solely for the protection of clients. They were adopted as part of the effort of the Supreme Court to maintain the highest standards of professional conduct by the members of the Bar in all facets of their professional life.

We adopt the holding of the Disciplinary Board of the *Hawaii Supreme Court v. Bergan*, 592 P.2d 814, 818 (Hawaii 1979):

> It is the solemn duty of this court to regulate the practice of law in this state and to see that the integrity of the profession is maintained by disciplining attorneys who indulge in practices inconsistent with the high ethical standards demanded of all members of the bar. . . . In carrying out this duty, we will not hesitate to impose substantial sanctions upon an attorney for any act – whether committed in a professional capacity or not – which evinces want of personal honesty and integrity or renders such attorney unworthy of public confidence.

And also *In re Goldman*, 588 P.2d 964, 978 (Mont. 1978):

> Any acts committed by an attorney, contrary to the highest standards of honesty, justice, or morality . . . whether committed in his capacity as attorney, or otherwise, may constitute cause for discipline.

As suggested in *Rhodes v. Rhodes*, *supra*, we realize lawyers are human and possess the frailties of the human character. While there may be qualities about particular attorneys which individual judges could not approve or condone, these flaws do not involve dishonesty or some conduct that adversely reflects upon his fitness to practice law.

On the other hand, conduct which adversely reflects upon an attorney's fitness to fulfill the obligations of our profession is subject to discipline whether the attorney was acting in a professional capacity or not. We must add that this Court, not the offending lawyer, will determine whether an attorney's conduct adversely affects his fitness to practice law.

Typically attorneys are entrusted with the money and property of others. The care and safekeeping of this property is a customary responsibility for a practicing attorney.

We cannot envision a more inappropriate person to fulfill such obligation than a man who swindled innocent persons out of their property.

In summary, we find that Brumfield, while acting in a representative and fiduciary capacity which he had undertaken, deliberately cheated and defrauded his aunts, and this conduct was a clear and convincing violation of DR 1-102 (A) (1, 4 and 6), subjecting him to appropriate discipline by the Bar.

CROSS-APPEAL

In its cross-appeal the State Bar contends the complaint tribunal should have disbarred Brumfield. We agree.

The misconduct of Brumfield, his dishonesty and deceit, was of such magnitude that disbarment is justified.

Moreover, we find a dismaying absence of contrition on the part of Brumfield, no recognition whatever by him of any wrongdoing.

It will therefore be the judgment of this Court that Brumfield be permanently disbarred from the practice of law in this State.

COMPLAINT TRIBUNAL'S FINDING FOR DISCIPLINARY ACTION AFFIRMED, COMPLAINT TRIBUNAL'S 90-DAY SUSPENSION REVERSED, AND CROSS-APPEAL FOR PERMANENT DISBARMENT AFFIRMED.

WALKER, C. J., ROY NOBLE LEE, P. J., DAN LEE, PRATHER, ROBERTSON, SULLIVAN, ANDERSON AND GRIFFIN, JJ., CONCUR.

APPENDIX A(2)

IN THE SUPREME COURT OF MISSISSIPPI
(BEFORE A COMPLAINT TRIBUNAL)

CONFIDENTIAL

MISC. NO. 173

MISSISSIPPI STATE BAR

Complainant

versus

H. ALVA BRUMFIELD, III

Respondent

RECEIVED AND FILED:
February 5, 1985
Robert E. Womack
Supreme Court Clerk

OPINION AND JUDGEMENT OF THE TRIBUNAL

The hearing in this cause was originally begun on November 12, 1984, and recessed by the Tribunal until December 17, 1984.

On December 17, 1984 the hearing was reconvened at which time the Complainant presented the remainder of its case in chief and the Respondent presented his case in chief and the Tribunal requested Memoranda Briefs by both parties concerning their respective positions.

After hearing and considering all evidence adduced by both sides and observing the witnesses, while giving their testimony and hearing arguments of counsel, the Tribunal finds as follows.

FINDINGS OF FACTS

(1) That Respondent is a nonresident of the State of Mississippi whose last known residence address was 509 St. Louis Street, Baton Rouge, Louisiana, and that on July 16, 1984 Respondent executed a Receipt And Waiver of Personal Service of Process And Entry Of Appearance in this cause.

(2) That at all times hereinafter mentioned Respondent was a member of the Mississippi State Bar subject ot the disciplinary jurisdiction of the Supreme Court of Mississippi and its disciplinary agencies, and that this Tribunal does have jurisdiction over both the parties and the subject matter hereto.

(3) That the Formal Complaint was filed pursuant to a directive issued by the Committee on Complaints of the Mississippi State Bar to Complaint Counsel dated June 13, 1984, and received in the offices of Complainant on June 14, 1984. That a true and correct copy of said directive was attached to the Formal Complaint as Exhibit One (1).

(4) That Respondent owned a 1/15th interest in certain real property lying and being situated in Walthall County, Mississippi, said interest being owned in co-tenancy with the following named individuals:

> Georgia Rae B. Davis - 1/5th interest (hereinafter referred to as Davis)
>
> Lucy B. Handley - 1/5th interest (hereinafter referred to as Handley)
>
> Elizabeth B. Allemandi - 1/5th interest (hereinafter referred to as Allemandi)

Billy Brooks Brumfield - 1/5th interest (hereinafter referred to as Billy Brumfield)

Julia B. Sims - 1/15th interest (hereinafter referred to as Sims)

William P. Brumfield - 1/15th interest (hereinafter referred to as W. Brumfield)

(5) That said real property was located in Walthall County, Mississippi and is more particularly described as follows to-wit:

All that part of the Southwest Quarter of Section 18, Township 2 North, Range 12 East, lying south of Knoxo public road, Walthall County, Mississippi, containing 36 acres, more or less.

(6) That on or about August 6, 1979, Respondent was contacted by Dr. John C. Barrett, hereinafter referred to as Barrett, who then offered Respondent the sum of $700 per acre for the purchase of said property.

(7) That by letter dated August 6, 1979 Respondent advised Allemandi that an offer had been made for the purchase of said property but advised Allemandi that the amount of the offer was $450 an acre.

(8) That by said letter shown as Exhibit Two (2), Respondent advised Allemandi that the funeral expenses for Bert C. Brumfield, deceased husband of Billie Brumfield and hereinafter referred to as Bert Brumfield, would be paid from that portion of the proceeds payable to Respondent and that said statement was made by Respondent to further induce the parties into agreeing to the sale of said property.

(9) That by letter dated August 13, 1979 Respondent forwarded to Allemandi Respondent's check in the amount of $3,240 together with a warranty deed for execution of Allemandi.

(10) That by letter of August 18, 1979 Allemandi acknowledged receipt of the check and documents and provided to Respondent the current addresses of Handley and Davis.

(11) That by letter of August 27, 1979 Respondent forwarded to Davis a check in the amount of $3,240 together with a warranty deed for execution by Davis.

(12) That by letter dated August 27, 1979 Respondent forwarded to Handley a check in the amount of $3,240 together with a warranty deed for execution by Handley.

(13) That on or about September 24, 1979 Respondent delivered to Billy Brumfield a check in the amount of $1,027.68 which check represented the proceeds due Billy Brumfield from the sale of Walthall county property less payment made to Radenhorst Funeral Home, Inc. for the funeral expenses of Bert Brumfield, which payment was contrary to the original promises made by Respondent.

(14) That on September 24, 1979 Billy Brumfield executed a warranty deed conveying Billy Brumfield's 1/5 interest in the Walthall county property to Respondent.

(15) That all of the deeds executed in Respondent were filed in the Chancery Clerks office for the County of Walthall on or about September 26, 1979.

(16) That Respondent willfully and deliberately misrepresented the actual value of the property and the outstanding offer to purchase by Barrett at a time in which

Allemandi, Handley, Davis, and Billy Brumfield were acting in good faith reliance upon Respondent to act on their behalf in handling the transfer of the subject property to Barrett, and constituted an attempt by Respondent to defraud Allemandi, Handley, Davis and Billy Brumfield.

(17) That on November 13, 1979 a Bill of Complaint was filed against Respondent in the Chancery Court of Walthall County, Mississippi on behalf of Allemandi and Handley seeking to cancel the executed deeds, establish a constructive trust, recover against the trustee and compel and accounting by said trustee.

(18) That on November 29, 1979 an Amended Bill of Complaint was filed against Respondent which added Davis as a complainant.

(19) That a trial was held upon the allegations contained in the Amended Bill of Complaint and on November 17, 1981 a Final Decree, finding against Respondent, was entered in said cause.

(20) That Respondent appealed the decisions of the Chancery Court of Walthall County, Mississippi to the Supreme Court of Mississippi, which decision was ultimately affirmed by this Court without written opinion.

(21) That Respondent's conduct amounts to violation of certain Disciplinary Rules of the Code of Professional Responsibility of the Mississippi State Bar, hereinafter referred to as DR, approved by the Supreme Court of the State of Mississippi, in the following particulars:

> (A) DR1-102(A)(1, 4 and 6) which provides that a lawyer shall not violate a Disciplinary Rule; engage in conduct involving dishonesty,

> fraud, deceit, or misrepresentation; or engage in any other conduct that adversely reflects on his fitness to practice law.

(22) That Respondent has demonstrated unprofessional and unethical conduct and conduct evincing unfitness for the practice of law which constitutes legal grounds for discipline to be imposed against Respondent.

(23) That Complainant is entitled to recover of and from Respondent the sum of $329.16 plus the cost and expenses occassioned by the litigation of this Formal Complaint.

CONCLUSIONS OF LAW

(1) The Tribunal concludes that there was a confidencial and/or fiduciary relationship between the Respondent and the other parties referred to in this opinion.

(2) The Tribunal concludes that there was not an attorney/client relationship, but notwithstanding this the Respondent was still under an obligation not to commit the acts enumerated in this Opinion.

(3) The Tribunal further concludes that the Respondent breached a confidential and or fiduciary duty and that the Respondent is guilty of violating DR1-101(A)(1, 4 and 6) of the Code of Professional Responsibility of the Mississippi State Bar.

JUDGEMENT OF THE TRIBUNAL

Taking all salient factors into consideration, the Tribunal finds that the Respondent should be suspended from the practice of law for a period of ninety (90) days.

So ordered and adjudged this 24th day of January, 1985.

s/s ALFRED G. NICOLS, JR.
ALFRED G. NICOLS, JR., MEMBER

s/s JOHN W. PREWITT, SR.
JOHN W. PREWITT, SR., MEMBER

s/s FRED A. ROSS, JR.
FRED A. ROSS, JR., MEMBER

APPENDIX B

IN THE SUPREME COURT OF MISSISSIPPI
DECISIONS HANDED DOWN DECEMBER 3, 1986

GRIFFIN, J.

57,430 Mohamed Husain v. Jonelle Husain; Chancery, Yazoo; Affirmed. Motion for Allowance of Counsel Fees Overruled.

ANDERSON, J.

56,007 Indemnity Ins. Co. of North America v. Joe Don Melton, et al. and the State of Mississippi; Circuit, Harrison; Reversed and Remaded. Griffin, J., Not Participating.

56,658 Carl Montgomery Reeves v. Patsilu Sheely Reeves; Chancery, Hinds; Vacated and Remanded.

56,796 Billie V. Bush v. City of Gulfport, MS; Circuit, Harrison; Conviction for Speeding and Disorderly Conduct and Fines of $320.00, with $125.00 Suspended Pending Good Behavior, Affirmed.

57,510 Jerome Madison v. Margaret Aldridge Madison; Chancery, Madison; Affirmed.

SULLIVAN, J.

X 57,240 Frederick W. Ratliff, Jr. v. Martha Chadwick Ratliff; Chancery, Hinds; Reversed and Remanded.

56,934 Kenneth Jones and Bonnie Jones v. Earl McDonald and Mark McDonald; Chancery, Rankin; Affirmed.

57,145 Gary D. Wray v. James E. Poole, Jr.; Circuit, Madison; Affirmed.

ROBERTSON, J.

XX 56,740 Claiborne County Board of Education v. Nathaniel Martin, Jr.; Chancery, Claiborne; Affirmed. Dan Lee, J., and Walker, C.J., Dissent by Written Opinion.

X 57,220 Jimmy Lee Shannon v. Charles Henson; Circuit, Neshoba; Affirmed. Dan Lee, J., Dissents.

PRATHER, J.

X 56,928 Harry Eason v. Carl C. Hudson and Katie M. Hudson; Chancery, Newton; Affirmed on Direct Appeal; Reversed on Cross-Appeal and Rendered in Part and Remanded in Part.

HAWKINS, P.J.

X 55,841 City of Mound Bayou v. Roy Collins Construction Co., Inc. & D. D. Freeland Construction Co. d/b/a A Joint Venture; Circuit, Bolivar; Affirmed.

ROY NOBLE LEE, P.J.

X 55,951 James Rucker, Udell Stubbs Trucking Co. and Magna Corp. v. Brenda Faye Hopkins, Widow of Charles Edward Hopkins, Dec'd; Circuit, Hinds; Reversed and Remanded. Anderson, J., Not Participating. Motion by Appellee to Strike Portions of Appellants' Rebuttal Brief Overruled.

X CM-211 Paul H. "Bud" Holmes v. Miss. State Bar Ass'n; Complaint Tribunal; Appellant Disbarred from the Practice of Law in the State of Mississippi. Walker, C.J., Dan Lee, and Sullivan, JJ., Not Participating.

WALKER, C.J.

57,450 Eddie Presley v. State; Circuit, Lowndes; Conviction of Armed Robbery and Sentence of Twenty (20) Years as an Habitual Offender, Without Benefit of Probation or Parole, Affirmed.

56,761 Whit Dulin v. State; Circuit, Panola; Conviction of Receiving Stolen Property and Sentence of Five (5) Years, with Two (2) Years Suspended Pending Appellant's Behavior, Affirmed.

THE COURT SITTING EN BANC:

54,358 John Buford Irving, III v. State; Circuit, Pontotoc; Motion for Stay of the December 10, 1986, Execution Date Pending Disposition of the Petition for Certiorari Pending in the United States Supreme Court Sustained. Hawkins, P.J., and Roberton, J., Not Participating.

55,760 Melvin Griffin & Larry Griffin v. State; Circuit, Bolivar; Petition for Rehearing on Motion to Make Bond Forfeiture Final Denied.

55,805 Birdie Hall Neil, et al. v. Glenda Fowler Jones; Chancery, Monroe; Petition for Rehearing Denied.

55,914 John R. Smith v. State; Circuit, Grenada; Petition for Rehearing Denied.

56,006 Henry E. Houston, Amanda Houston & Nancy Houston v. The Mayor & Aldermen of the City of Vicksburg; Circuit, Warren; Petition for Rehearing Denied.

57,091 Tinsley Hynson Easterling v. Robert G. Hynson; Chancery, Jones; Petition for Rehearing Denied.

57,300 Michael Wayne Parrett v. State; Circuit, Harrison; Petition for Rehearing Denied. Griffin, J., Not Participating.

THE COURT SITTING EN BANC (Continued):

CM-173 H. Alva Brumfield, III v. Miss. State Bar; Complaint Tribunal; Petition for Rehearing Denied. Motion to Amend Petition for Rehearing Overruled.

PER CURIAM:

57,300 Michael Parrett v. State; Petition for Production of Records Denied.

57,384 Mary Elizabeth Ryan v. State; Motion for Suggestion of Diminution of the Record Granted. Motion to Strike Improper Matter from Brief of Appellant Denied.

57,503 Carl Daniel Lockett v. State; Suggestion of Diminution of the Record Denied.

57,637 Phillip Perkins v. State; Appeal Dismissed on Motion of the Court for Lack of Prosecution.

57,638 Phillip Perkins v. State; Appeal Dismissed on Motion of the Court for Lack of Prosecution.

57,645 Jethro Jones v. State; Appeal Dismissed on Motion of the Court for Lack of Prosecution.

Misc. No.2156-A John C. Coleman v. Kado Sanford, et al.; Motion for Relief under Subdivision (b) Rule 60 Denied.

Misc. No.2215 Miss. Highway Safety Patrol v. Willie E. Horhn, et al.; Petition for Rehearing on Motion for Writ of Supersedeas Denied.

PER CURIAM (Cont'd):

Misc. No.2228	Robert E. Lee v. State; Petition for Writ of Mandamus Denied.
Misc. No.2230-A	Jerry P. Thomas v. State; Petition for Writ of Mandamus Denied as Moot.
Misc. No.2253	State of Miss. v. George Homer Heflin; Petition for Injunctive Relief Denied.

ONLY CASES MARKED "X"
HAVE WRITTEN OPINIONS.

Respectfully submitted,

Sue Gordon, Clerk
Yvonne Burnham, D. C.

***** NOTICE ***** COPIES OF LIST OF DECISIONS AND/OR COPIES OF OPINIONS WILL NOT BE MAILED OUT IF THERE IS A DELINQUENT AMOUNT DUE THIS OFFICE. *PLEASE KEEP YOUR ACCOUNT CURRENT.*

APPENDIX C

IN THE SUPREME COURT OF MISSISSIPPI

CM-173

H. ALVA BRUMFIELD, III

versus

MISSISSIPPI STATE BAR ASSOCIATION

ORDER OF DISBARMENT

This cause is before the Mississippi Supreme Court on a direct appeal by H. Alva Brumfield, III, from a judgment of the Complaint Tribunal of the Mississippi State Bar Association suspending him from the practice of law for a period of ninety (90) days, and a cross-appeal by the State Bar to this Court to disbar him, and the Court having fully read and considered the entire record, finds:

(1) That the conclusions of law of the Complaint Tribunal that Brumfield occupied a fiduciary relationship which he breached, and that he violated DR 1-101 (A) (1, 4 and 6) of the Code of Professional Responsibility of the Mississippi State Bar is correct, and Brumfield's misconduct was dishonest, fraudulent and deceitful.

(2) That the judgment of the Complaint Tribunal suspending Brumfield from the practice of law for a period of ninety (90) days constitutes insufficient discipline for the magnitude of his misconduct, and Brumfield is in fact guilty of misconduct warranting an order of permanent disbarment as provided for in Miss. Code Ann. §§ 73-3-327 and 73-3-329 (Supp. 1985).

It is therefore the judgment of the Court that H. Alva Brumfield, III, be permanently disbarred from the practice of law in the State of Mississippi.

ORDERED this the 10th day of September, 1986.

s/s ARMIS E. HAWKINS
ARMIS E. HAWKINS
PRESIDING JUSTICE

APPENDIX D

AMENDMENTS TO THE UNITED STATES CONSTITUTION

AMENDMENT V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress,

the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies therof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX E

DISCIPLINARY RULES

DR 1-101. Maintaining Integrity and Competence of the Legal Profession

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with, his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

DR 1-102. Misconduct

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

(2) Circumvent a Disciplinary Rule through actions of another.

(3) Engage in illegal conduct involving moral turpitude.

(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his fitness to practice law.

DR 1-103. Disclosure of Information to Authorities

(A) A lawyer possessing unprivileged knowledge of a violation of DR 1-102 shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

APPENDIX F

RULES OF DISCIPLINE FOR THE MISSISSIPPI STATE BAR

Effective January 1, 1984

Including Amendments Received Through July 1, 1986

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PART ONE. RULES OF DISCIPLINE

GROUNDS FOR DISCIPLINE

The license to practice law in this state is a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters, and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of that privilege to conduct himself at all times, both professionally and personally, in conformity with the standards imposed upon members of the bar as conditions for the privilege of practicing law. Acts or omissions by an attorney, individually or in concert with any other person or persons, which violate the Attorney's Oath of Office or the Code of Professional Responsibility as now set forth or as hereafter amended,

shall constitute misconduct and shall be grounds for discipline, whether or not the acts or omissions occurred in the course of an attorney-client relationship.

RULE 1. JURISDICTION

(a) The Supreme Court of Mississippi (the Court) has exclusive and inherent jurisdiction of matters pertaining to attorney discipline, reinstatement, and appointment of receivers for suspended and disbarred attorneys, and hereafter such proceedings shall be conducted in accordance with these rules. The court shall be the ultimate judge of matters arising under these rules, and from time to time the Court shall review these rules and amend them when necessary or desirable.

(b) Nothing contained in these rules shall be construed to deny to any other court such powers as may be necessary for that court to maintain control over practice and proceedings conducted before it; such as the power of contempt, nor to prohibit local bar associations from censuring, suspending, or expelling their members from membership in such local bar associations.

(c) Actions by other courts or by local bar associations are cumulative and in addition to the disciplinary jurisdiction of the Supreme Court of Mississippi and its disciplinary agencies. Actions by other courts and local bar associations shall not be binding or conclusive as to the Court or the Mississippi State Bar (the Bar), and any action taken by them shall be reported to the Bar, and when required by rule or by statute, to the Court.

(d) Nothing herein shall be construed to affect or limit the Court's power to regulate admission to the practice of law.

Procedure

(1.1) The jurisdiction of the Court shall extend to any resident or nonresident attorney who practices law or renders legal services in the State of Mississippi. Any nonresident, by rendition of legal services in this state, shall be deemed to have appointed the executive Director of the Bar as his agent for services of process or any notice required by these rules.

RULE 2. POWER AND ENFORCEMENT

(a) Each of the disciplinary agencies is hereby given such jurisdiciton and lawful powers as are necessary to conduct a proper and speedy disposition of any complaint. The power to summons and examine witnesses under oath and to compel their attendance, or take or cause to be taken the deposition of witnesses, and to order the production of books, papers, records, and other documentary evidence necessary or the powers exercisable by the courts of record of this State. All summonses or subpoenas shall be issued by the Clerk of the Court, and it shall be the duty of any person so summoned to appear and testify as in the writ commanded and to produce the books, papers, records, or other documentary evidence required. Summonses and subpoenas issued by the Clerk shall be served as in the Circuit Court.

(b) Any defiance of any summons or subpoenas so issued, or other extrajudicial conduct which shall inhibit, impede, or disrupt any of the above disciplinary agencies in the performance of the duties and in the excercise of the powers herein given shall be treated as contempt of Court and punishable accordingly.

Procedure

(2.1) The Clerk of the Court shall file all pleadings and issue all process. Summonses and subpoenas shall be served as

in the Circuit Court; provided, such summonses and subpoenas shall avoid name identification of the accused attorney. Costs shall be paid by the party or person requesting the issuance.

RULE 3. DISCIPLINARY AGENCIES DESIGNATED

[Pub. Note: By order dated October 20, 1984, the Supreme Court amended Rule 3 to establish and designate the positions of "General Counsel" and "Assistant General Counsels" as additional agencies of the Court for the purposes of administering the Court's disciplinary jurisdiction pursuant to the Rules of Discipline for the Mississippi State Bar.]

For purposes of administering the Court's disciplinary jurisdiction, the following entities are hereby established and designated as agencies of the Court.

(a) The Board of Commissioners of the Bar.

(b) The Executive Director of the Bar and Complaint Counsel.

(c) The Complaints Committee of the Bar.

(d) The Complaint Tribunal and Panels appointed by the Court.

(e) Receivers designated by the Committee, a tribunal or the Court.

(f) Other attorneys who may from time to time be requested in writing by the President or First Vice-President of the Bar or by the Court to assist with an investigation or prosecution.

Procedure

(3.1) When acting in the course of their disciplinary duties, each of the disciplinary agencies shall be considered a special master of the Court.

(3.2) The agencies shall be composed of active practicing attorneys or judges of the Circuit, Chancery or County Courts who are members of the Bar of this State and shall further be constituted as follows:

(a) *Board of Commissioners.* The Board of Commissioners of the Bar is provided for by Section 73-3-107, Mississippi Code of 1972. The Board shall have the authority to employ and compensate competent persons to serve as Complaint Counsel, Assistant Complaint Counsels and non-lawyer staff who shall serve at the pleasure of the Board, either in full-time or part-time capacity, as the Board may from time to time deem necessary or advisable to effect the disciplinary procedures set forth herein.

(b) *Complaints Committee.* The Complaints Committee shall be composed of six (6) members appointed by the President of the Bar for terms of two (2) years except the terms of the initial members shall be staggered in one and two year terms and shall consist of two members from each of the Supreme Court Districts of the state. The Chairman and Vice Chairman of the Committee shall be designated by the President of the Bar.

(c) *Panels.* The Court shall appoint a panel of judges and attorneys from each Supreme Court District, and from those panels Complaint Tribunals shall be designated and constituted as the need arises. The panel members shall be in such numbers as the Court may deem appropriate. The term of office of all panel members shall be three (3) years, except the terms of the initial members shall be staggered in one, two and three year terms. No panel member shall serve more than two consecutive three-year terms. Appointments may be terminated by the Court.

(d) *Complaints Tribunal.* All tribunal members shall be selected from the panels memtioned above. Each tribunal shall consist of two attorneys and one judge, and the judge member shall serve as the presiding judge of the tribunal. All members of a tribunal designated to hear and determine a case as hereafter provided shall conclude the matter,

the termination of a term of office of one or more of its members notwithstanding. All members of a Complaint Tribunal shall reside in a Chancery and Circuit Court District different from that within which the accused attorney resides. Tribunal members shall be selected on a rotating basis from the panels mentioned above.

(e) *Receivers.* To the extent possible, receivers shall reside in a Circuit and Chancery Court District different from that within which the accused attorney resides. No attorney shall be designated a receiver where a conflict of interest may exist or where it would otherwise be improper for the files of the accused, disbarred, suspended, disabled or deceased attorney to be revealed to him. Receivers may be designated in such numbers as appears necessary.

(f) *Other Attorneys.* The assistance of other attorneys shall be requested and utilized on a case-by-case basis, and they shall be deemed to act for the Court only when their assistance has been requested in writing by the President or the First Vice-President of the Bar, such attorneys may be individuals or members of local professional responsibility committees or local complaint committees.

RULE 4. INITIATION AND FILING OF COMPLAINTS

(a) Any matter touching on the misconduct of an attorney licensed by the State of Mississippi or any attorney who renders or has rendered legal services in this state shall be called to the attention of Complaint Counsel either verbally or in writing.

(b) All attorneys, courts and their officers shall have the affirmative duty to notify Complaint Counsel of conduct of any attorney evincing unfitness for the practice of law or unprofessional or unethical conduct and any action taken by the Court.

(c) The committee on complaints shall not consider the matter until it has been reduced to writing.

Procedure

(4.1) Complaint Counsel shall keep a docket of all written complaints, but same shall not be considered a grievance or charge touching the attorney's conduct until docketed with the Executive Director of the Bar by the Complaints Committee. Until docketed with the Executive Director, the attorney may state that no complaint, grievance or charge has been filed against him. Complaints at any stage may be reported for statistical purposes.

(4.2) Written complaints shall contain:

(a) The name, mailing address, and phone number of the complainant; and

(b) The name and address of the accused attorney; and

(c) A statement of the facts of the complaint; and

(d) A list of witnesses, with addresses and phone numbers, if known; and

(e) Copies of any statements by the witnesses and documents in support of the statement of facts of the complaint.

(4.3) If a written complaint is found to be deficient, complaint counsel may return it to complainant with a statement of the deficiency. All such complaints shall be reported to the Complaints Committee if the deficiency has not been cured within forty-five (45) days of the date on which the same was returned to the complaining person. The Complaints Committee thereafter may act upon those matters as provided in Rule 7.

RULE 5. COMPLAINT COUNSEL–DUTIES AND POWERS

The Complaint Counsel shall investigate complaints, prosecute formal complaints, and discharge other duties assigned by the Board of Commissioners. Complaint Counsel shall conduct any investigation or investigatory hearing fairly and impartially and shall seek to elicit any and all facts which

might be exculpatory or incriminatory of the accused attorney. All proceedings under these rules shall be expeditiously conducted to the end that no complainant be deprived of his right to a timely, fair and proper investigation of a complaint and that no attorney be subjected to unfair and unjust charges.

Procedure

(5.1) General. Upon receipt of a written complaint or information indicating probable cause, Complaint Counsel shall conduct an investigation, either with or without notice to the accused attorney, as in Counsel's discretion appears appropriate. Complaint Counsel may require a complaint to be in writing or may file a complaint on information and belief. Statements and evidence during an investigation shall be obtained in the most expeditious and efficient manner possible without a sacrifiec of accuracy.

(5.2) Investigations and Reports. Complaint Counsel shall investigate and report to the Complaints Committee within sixty (60) days from receipt of the written complaint. Upon completion of the investigation, a copy of the report, complaint and all evidence shall be served upon the attorney. In Complaint Counsel's discretion, the complaint and evidence may be served upon the attorney prior to submission of the report to the Complaints Committee.

(5.3) Any responses by the attorney to the report shall be tendered to Complaint Counsel within fifteen (15) days of the mailing of the report.

(5.4) The Chairman of the Complaints Committee may enlarge the time for completion of an investigation and submission of Complaint Counsel's report or the attorney's responses.

(5.5) Process During Investigations. Subpoenas during investigations may be issued only upon approval of the Chairman or a majority of the Complaints Committee.

(5.6) Complaining Person or Witnesses. The person signing the complaint is not a party to the proceedings, and the failure or refusal of that person or any witness to cooperate during the investigation

shall not be cause for dismissal of the complaint or termination of the investigation or proceedings before a complaint tribunal. Any person signing a complaint or any witness may be represented by counsel or may proceed as counsel for themselves during any investigation.

(5.7) **The Accused Attorney.** The accused attorney is a party to the proceedings, and after written notice of the investigation or complaint has been given to the attorney by Complaint Counsel, the accused attorney or his counsel may appear at any investigatory hearing conducted by complaint counsel.

(5.8) **The Investigatory Hearing.** An investigatory hearing in the discretion of complaint counsel or by direction of the complaints committee may be conducted during the investigation and prior to the submission of complaint counsel's report to the committee. After written notice of the complaint or investigation is given to the attorney, such attorney or counsel therefor shall have the right to appear at any investigatory hearing for the purposes of examining or cross-examining all witnesses and for presenting witnesses and evidence on behalf of the attorney.

RULE 6. SUSPENSIONS AND DISBARMENTS BASED ON OTHER PROCEEDINGS

(a) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall be convicted in any court of any state or in any federal court, or enter a plea of guilty or a plea of nolo contendere therein, of any felony (other than manslaughter) or of any misdemeanor involving fraud, dishonesty, misrepresentation, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment of conviction shall be presented to the Court by Complaint Counsel and shall be conclusive evidence thereof. The Court shall then forthwith strike the name of the attorney and order his immediate suspension from the practice of law.

(b) Upon reversal of the conviction or judgment that has resulted in the automatic suspension, the attorney shall be

immediately reinstated, but such reinstatement shall not bar or terminate any disciplinary proceeding instituted thereafter or then pending against the attorney. For purposes of these rules, executive clemency or pardon shall not constitute reversal of the conviction and shall not bar or terminate disciplinary proceedings predicated upon such convictions or judgments.

(c) Whenever any attorney subject to the disciplinary jurisdiction of the Court shall have entered against him in any Court of any State or in any Federal Court a civil judgment in accordance with Section 11-49-3, Mississippi Code of 1972, or any other civil judgment based upon clear and convincing evidence of fraud, misrepresentation, dishonesty, deceit, or willful failure to account for money or property of a client, a certified copy of the judgment, upon becoming final, shall be presented to the Court by Complaint Counsel and shall constitute sufficient, clear and convincing evidence of the facts necessary to support such judgment, and, unless successfully rebutted, the Court shall forthwith strike the name of the attorney and order his immediate suspension from the practice of law. This section shall not apply to Internal Revenue Code, Federal Communications Commission, Securities and Exchange Commission, Federal Trade Commission, and/or similar Federal Agency violations involving civil judgments and/or civil penalties, but nothing herein contained shall prohibit disciplinary prosecution for felony convictions based upon such violations.

(d) When time for appeal from judgment or conviction provided above expires or all appeals have been concluded without reversal, Complaint Counsel shall certify that result to the Court, and the Court shall forthwith enter an order of disbarment.

(e) Upon conviction of manslaughter, Complaint Counsel shall immediately commence an investigation and where warranted shall, upon directive of the Complaints Committee, present same to the Court for its consideration as herein set out.

(f) The judge of any court within this state shall have the affirmative duty to cause a certified copy of a conviction or judgment to be transmitted to Complaint Counsel.

Procedure

(6.1) A Formal Complaint, with a certified copy of the criminal judgment or conviction attached, and a motion for indefinite suspension pending appeals shall be filed with the Court, upon which the attorney shall be automatically suspended subject to the right of such attorney to move for reconsideration upon a showing that the judgment or conviction has been reversed or a new trial is granted.

(6.2) Upon a showing that the time for all appeals has expired, or that all appeals have been concluded without reversal, the attorney shall be automatically disbarred.

(6.3) In a proceeding based upon a civil judgment, Complaint Counsel shall file a Formal Complaint, with a certified copy of the judgment attached, which shall constitute a prima facie case.

RULE 7. COMPLAINTS COMMITTEE – DUTIES AND POWERS

(a) The Committee shall function as a grand jury in matters of attorney discipline.

(b) Upon receipt of a complaint, Complaint Counsel's report and any response by the attorney, within a reasonable time the Committee shall:

(i) Dismiss any complaint without merit and retire the file; or

(ii) Direct or conduct further investigation if needed; or

(iii) Refer the matter to Complaint Counsel for filing and prosecution of a Formal Complaint; or

(iv) If investigation discloses a minor ethical violation or instance of relatively trivial misconduct which does not warrant disciplinary action but which should not be dismissed as being without merit, a letter of admonition shall be sent to the attorney of whom complaint was made and a copy thereof to the person making complaint, provided that where a letter of admonition is sent to an attorney complained against, said attorney shall be advised that he has the right within twenty (20) days after receipt of the letter to request in writing that formal disciplinary proceedings be initiated against him to adjudicate the propriety of the conduct upon which the admonition is based. If such request is timely made, the letter of admonition will be deemed vacated and the matter will be processed by means of a Formal Complaint. Informal admonition shall not be used as a substitute for and shall not be considered, discipline. However, the fact, nature and cause of such admonition may be disclosed in any subsequent disciplinary proceedings of a similar nature against the attorney.

Procedure

(7.1) Dismissals. Any complaint dismissed pursuant to Rule (b)(i) shall be neither reported to nor docketed by the Executive Director of the Bar, and such complaints shall be deemed expunged and not considered a charge touching upon the conduct of the attorney. Upon dismissal, the complaining person, the accused attorney and Compiaint Counsel shall be given notice.

(7.2) Referrals for Investigation. Upon receipt of Complaint Counsel's report and any response by the attorney, the Committee may refer the matter for additional investigation and report with such instructions as may appear appropriate. The Committee shall

periodically fix the costs and expenses incurred as of that date; provided, no cost shall actually be assessed unless a discipline is finally imposed. Upon referral for additional investigation and report, Complaint Counsel shall have not more than sixty (60) days from and after the date of receipt of the referral directive to conclude the additional investigation and report back to the Committee. A copy of that report and all evidence shall be served upon the accused attorney who shall have fifteen (15) days to respond. Within thirty (30) days, unless enlarged by the Chairman, the Complaints Committee shall act upon the matter.

(7.3) **Formal Complaints.** If, after conclusion of the investigation, the Committee is of the opinion that probable cause exists to believe the attorney is guilty of conduct warranting discipline, the matter shall be referred to Complaint Counsel for filing of a Formal Complaint for trial before a Complaint Tribunal. Within thirty (30) days of the date of the receipt of the directive, Complaint Counsel shall file the Formal Complaint with the Clerk of the Court with a certificate of costs incurred to date.

(7.4) **Complaints Docketed by the Executive Director.** Formal Complaints shall be docketed by the Executive Director and shall not be expunged except on order of a Complaint Tribunal of the Court.

RULE 8. COMPLAINT TRIBUNAL – POWERS AND DUTIES

(a) All formal complaints shall be filed with the Clerk of the Court and the Court shall designate a Complaint Tribunal to hear and determine the matter. Hearings before Complaint Tribunals shall be as cases in chancery.

(b) At the conclusion of the hearing, upon majority vote, the tribunal shall render a written opinion incorporating a finding of fact and a judgment which may:

(i) Exonerate the accused attorney and dismiss the Formal Complaint; or

(ii) Publicly or privately reprimand the attorney; or

(iii) Suspend the attorney with or without probation for a fixed period of time and may specify conditions precedent to reinstatement; or

(iv) Disbar the attorney.

Procedure

(8.1) Within ten (10) days following the designation of a Complaint Tribunal, the presiding judge shall establish a tentative schedule for discovery, motion hearings and rulings, trial and adjudication, all of which shall be completed within one hundred and eighty (180) days from the date of the designation of the Tribunal, unless extended by the Court on motion of either party for good cause shown.

(8.2) All Formal Complaints shall be prosecuted in the name of the Bar by Complaint Counsel unless the President or First Vice-President of the Bar shall appoint another attorney or attorneys to assist or proceed in the place of Complaint Counsel.

(8.3) The Formal Complaint shall be served in accordance with the applicable Mississippi Rules of Civil Procedure.

(8.4) Unless an enlargement of time be granted by the presiding judge of the Complaint Tribunal, the attorney's answer shall be filed within twenty (20) days after a copy of the Formal Complaint is served.

(8.5) Trials shall be held in the attorney's county of residence; provided, upon written waiver by the attorney or upon motion made by either party and order by the Tribunal, trial may be held elsewhere. The presiding judge or his designee may hear all pre-trial motions and enter all appropriate pre-trial orders. Trial upon the merits shall be held before the full tribunal. Trials shall be held as expeditiously as possible and the presiding judge may schedule pre-trial conferences for all purposes.

((8.6) Imposition of Discipline.
except upon clear and convincing evidence. After final hearing on the merits, the opinion of the tribunal may provide the following:

(i) Exonerate the accused attorney and dismiss the Formal Complaint.

(ii) Publicly or privately reprimand the attorney. If the Tribunal is of the opinion that a private reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the Tribunal may order the attorney to appear before the Board of Commissioners of the Bar at the board meeting convening first after the reprimand becomes final or may have it forwarded to the attorney by the Clerk of the Court or by certified mail, return receipt requested, restricted delivery to addressee only. If the Tribunal is of the opinion that a public reprimand will adequately afford the disciplinary sanctions required by the particular circumstances, the Tribunal may order the attorney to appear before the Circuit Court of the attorney's county of residence on the first day of a term convening next after the date the reprimand becomes final or on some other similar day when a maximum number of the Bar and the public are present. When a reprimand becomes final, a copy shall be given to the person filing the complaint, the Executive Director of the Bar and to the judges of the circuit and chancery districts of the attorney's county of residence. Final public reprimands shall be read by the senior circuit judge or his designee at the time herein indicated and placed upon the minutes of the Court.

(iii) Suspend the attorney with or without probation for a fixed period of time, and may specify conditions precedent to reinstatement. When such orders of suspension become final, they shall be placed upon the minutes of the chancery and circuit courts of the attorney's county of residence, and shall immediately become matters of public record.

(iv) Disbar the attorney. Such orders, when entered, shall be treated as provided in sub-paragraph (iii), above.

RULE 9. APPEALS

(a) Either the Bar or the accused attorney may, as a matter of right, appeal any final disposition of the Tribunal to the Court.

(b) Where the Tribunal's final disposition is made upon a nolo contendere plea, an admission or an irrevocable resignation, the extent or absence of discipline shall be the sole question presented by an appeal.

Procedure

(9.1) Who May Take an Appeal. Either the Bar or the attorney may appeal a final disposition of the Tribunal. The Board of Commissioners of the Bar shall determine whether Complaint Counsel shall take an appeal on behalf of the Bar.

(9.2) Taking an Appeal. Any notice of appeal shall be filed and served on all opposing counsel within thirty (30) days of the date on which the Tribunal's judgment was filed with the Clerk of the Court and by paying within that time, all sums assessed as costs and expenses. Failure to give notice within that time or failure to pay the costs and expenses assessed, or failure to pay any costs due the Clerk of Court, shall be grounds for dismissal, notice and payment within the time provided being jurisdictional for any appeal. Otherwise, appeals shall be taken as in other civil cases.

[Amended January 2, 1985.]

(9.3) Distribution of Opinion and Judgment and Supersedeas. No reprimand, whether public or private, shall issue within thirty (30) days provided for taking an appeal or until the Court has disposed of any appeal. Judgments of suspension or disbarment, when final, shall immediately become a matter of public record, but an appeal duly perfected, as provided above, shall operate as supersedeas except as provided in Rules 6(a) and 10, and the accused attorney shall be permitted to continue the practice of law until such time as the Court disposes of the appeal.

[Amended January 2, 1985.]

(9.4) Extent of Appellate Review. Upon appeal, the Court shall review the entire record and the findings and conclusions of the Tribunal, and shall render such orders as the Court may find appropriate. In so ruling, the Court shall not be bound by the rule applicable to administrative agencies to the effect that their orders must be affirmed, unless they are arbitrary and capricious and are not supported by substantial evidence, or the rule that, as in chancery, the chancellor will not be reversed on the facts unless he is manifestly wrong. Upon the conclusion of any appeal, the Court shall award costs and expenses as in its discretion appears appropriate.

RULE 10. PLEAS OF NOLO CONTENDERE, ADMISSIONS AND IRREVOCABLE RESIGNATIONS

(a) Any time after the filing of the Formal Complaint, either the Complaint Tribunal or the Court may, in its discretion, accept pleas of nolo contendere and admissions. Upon acceptance, the proceedings may terminate, but nothing contained herein shall prevent the further receipt of evidence for purposes of determining the final disposition to be made under Rule 8, above.

(b) Irrevocable resignations may be tendered to the Court or Complaint Tribunal at any time after Complaint Counsel's receipt of a complaint.

Procedure

(10.1) Submission and Effect. The entity to which pleas, admissions or irrevocable resignation are submitted, shall direct what proceedings, if any, shall be had thereafter. If the Tribunal enters an opinion and judgment based upon a plea of nolo contendere, admission, or irrevocable resignation, the sole question to be presented by any appeal shall be the extent or absence of discipline.

(10.2) Pleas of Nolo Contendere – Contents. Such pleas need not address the factual matters alleged on the Formal Complaint. If accepted, a plea of nolo contendere shall be considered tantamount to proof of guilt on the matters charged for purposes of determining the discipline to be imposed or the disposition to be made.

(10.3) Admissions – Contents. Admissions shall fully address the factual matters alleged in the Formal Complaint, shall set out that the attorney could not defend himself on the matters admitted, and that the attorney submits to discipline on the matters admitted.

(10.4) Acceptance – Discretionary. Acceptance of a nolo contendere plea or an admission shall be discretionary. Such discretion shall include the right to accept a nolo contendere plea of the Formal Complaint and admission to the remainder.

(10.5) Irrevocable Resignation – Contents and Effect. An attorney may tender an irrevocable resignation to either the Court or the Tribunal. Such a resignation shall acknowledge each and all disciplinary matters then pending, provide the docket number or numbers, state that the attorney does not desire to defend, and request permission to resign with prejudice from the Bar. Upon receipt of such a resignation, and any response that the Bar may elect to file, the disciplinary proceedings shall terminate and either the Court or the Tribunal shall enter its order accepting the resignation, revoking the attorney's

APPENDIX G

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

CONFIDENTIAL MISC. NO. 173

H. ALVA BRUMFIELD, III,

Respondent

versus

MISSISSIPPI STATE BAR,

Petitioner

PETITION FOR REHEARING

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IN THE SUPREME COURT OF MISSISSIPPI

CONFIDENTIAL MISC. NO. 173

H. ALVA BRUMFIELD, III,

Respondent

versus

MISSISSIPPI STATE BAR,

Petitioner

PETITION FOR REHEARING

COMES NOW, H. Alva Brumfield, III, Respondent in the above styled disciplinary proceeding and would respectfully petition this Court for a Rehearing in this cause and in support thereof would assign the following as grounds for rehearing and withdrawal of the Opinion and Order of this Court of September 10, 1986:

I.

That this Court erred in the finding of a fiduciary relationship for the following reasons:

(a) There was undisputed, unrebutted, unequivocable testimony in the record from both Brumfield and affidavits from his aunts indicating that there was *no* fiduciary or quasi fiduciary relationship existing between Brumfield and his aunts;

(b) Testimony of the dentist, Dr. Barrett, is incompetent to establish a fiduciary relationship as between Brumfield and his aunts;

(c) Throughout the proceedings before the Complaints Tribunal below and in the briefing before this Court, the sole grounds for the existence of a fiduciary relationship between, Brumfield and the aunts has been the existence of a biological relationship between Brumfield and his Aunts. The assertion for the first time in this Court's Opinion that a fiduciary duty existed as a result of an *agency* relationship constitutes a denial of Due Process and is contraindicated by notions of substantial justice and fair play;

(d) That Brumfield stood in an arms-length capacity as to his aunts according to their own affidavits.

II.

That the sole testimony in the record upon which a decision to impose disciplinary measures against Brumfield is the testimony of Dr. Barrett. Dr. Barrett's testimony is in inherently and internally inconsistent, and suspect and therefore does not rise to the level of clear and convincing evidence which must exist prior to the imposition of disciplinary measures.

III.

The order of disbarment was arbitrary and capricious in that said disciplinary measure is inconsistent with other sanctions imposed in other disciplinary proceedings by this Court.

IV.

That this Court's ruling whereby H. Alva Brumfield, III, was disbarred from the practice of law in the State of Mississippi constituted a denial of Due Process in that

(a) The procedure followed by this Court in arriving at the decision for permanent disbarment constituted a deprivation of Due Process under the Fifth and Fourteenth Amendments of the United States Constitution and Articles 14, 26, 28 of the Mississippi Constitution.

In the interest of fair play, Due Process, and justice, H. Alva Brumfield should be given the opportunity to introduce evidence of his past good behavior, character, and service to the legal profession for consideration by the Court in determining appropriate punishment. Because the Tribunal imposed a punishment of ninety (90) days suspension, Respondent defended the charges against him before this Court solely on the issue of guilt or innocence. Respondent did not address the issue of appropriate punishment, and this Court did not request evidence or comment on punishment.

Respondent has been a practicing attorney for more than twenty-two (22) years. He has never been reprimanded, publicly or privately, by the Mississippi Bar Association or the Louisiana Bar Association until this incident. Brumfield enjoys a reputation of being an excellent trial attorney, and he is an active member of the American Trial Lawyers Association.

The procedure followed by this Court in its application of disciplinary rule 1-102(a) constituted a denial of Due Process under the Fifth and Fourteenth Amendments of the United States Constitution and Article Fourteen of the Mississippi Constitution in that Brumfield was never charged either in the complaint or the tribunal or at any time during these proceedings with being the "agent" of his Aunts. The rendition of this Court Opinion and Order of September 10, 1986 finding for the first time an agency relationship between Brumfield and his Aunts constitutes a denial of Brumfield's right to know and defend upon the grounds with which he is

charged in violation of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Articles Fourteen and Twenty-six of the Mississippi Constitution.

(b) The factors considered by this Court and arriving at the decision for permanent disbarment constituted a deprivation of Due Process under the Fifth and Fourteenth Amendments of the United States Constitution and articles Fourteen, Twenty-six, and Twenty-eight of the Mississippi Constitution.

(1) The Code of Professional responsibility of the State of Mississippi disciplinary Rule 1-102 (a)(1), 4 and 6 are unconstitutionally vague as applied by this Court in its Opinion and Order of September 10, 1986, in that any interpretation of DR1-102(a) which authorizes the imposition of disciplinary measures based upon what an attorney "probably knows" is unconstitutionally vague and constitutes a denial of Due Process.

(2) DR1-102(a) is unconstitutionally vague as applied by this Court in its Opinion and Order of September 10, 1986 in that this Court's disbarment of Brumfield for his failure to reconvey the subject property upon *subsequently* learning of its oil value as "the only honorable thing to do" renders the disciplinary rule as applied by this Court unconstitutionally vague.

WHEREFORE, PREMISES CONSIDERED, your petitioner would respectfully pray that this Court reconsider its Opinion and Order of disbarment of Brumfield, that the Opinion and Order of September 10, 1986, in this matter be withdrawn

and that defendant, Brumfield, be reinstated to the practice of law in the state of Mississippi.

Respectfully submitted,

BY: H. ALVA BRUMFIELD

BY: RUSHING & GUICE

BY: s/s NICHOLAS V. WISER
NICHOLAS V. WISER

CERTIFICATE

I, NICHOLAS VAN WISER, of counsel for H. Alva Brumfield, III, do hereby certify that I have this date mailed a true and correct copy of the above and foregoing Petition for Rehearing, postage prepaid, by means of United States Mail to Michael Martz, complaint counsel for the Mississippi State Bar, at his usual mailing address of Post Office Box 2168, Jackson, Mississippi 39205; to the Honorable Alfred G. Nichols, at his usual mailing address of Post Office Box 32, Brandon, Mississippi 39042; to the Honorable John W. Prewitt, at his usual mailing address of 914 Grove Street, Vicksburg, Mississippi 39180; and to the Honorable Fred Ross, Jr., at his usual mailing address of Post Office Box 1669, Jackson, Mississippi 39205.

This the _____ day of October, 1986.

s/s NICHOLAS VAN WISER
NICHOLAS VAN WISER

IN THE SUPREME COURT
OF THE STATE OF MISSISSIPPI

CONFIDENTIAL MISC. NO. 173

H. ALVA BRUMFIELD, III,

Respondent

versus

MISSISSIPPI STATE BAR,

Petitioner

BRIEF IN SUPPORT OF PETITION FOR REHEARING

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Attorneys for Respondent

THE SUPREME COURT OF MISSISSIPPI

CONFIDENTIAL MISC. NO. 173

H. ALVA BRUMFIELD, III,

Appellant

versus

MISSISSIPPI STATE BAR,

Appellee

BRIEF IN SUPPORT OF PETITION FOR REHEARING

COMES NOW H. Alva Brumfield, III, and would respectfully submit this his Memorandum Brief in support of the Petition for Rehearing of his appeal from the decision of the Complaints Tribunal handed down by this Court on September 10, 1986.

INTRODUCTION

It is out of the utmost respect for this Court's unswerving dedication to truth and justice that this Petition for Rehearing has been filed, attempting to set forth both the facts and the law which were apparently inadequately presented in the Brumfield briefs.

In addition to the issue of guilt or innocence, Brumfield would direct this Court's attention to the issue of punishment. There should be a correlation between the severity of the violation and the severity of the punishment. Moreover, an offender's past record should be a factor in the severity of the punishment.

Brumfield would implore this Court to reconsider the severe punishment of disbarment, by taking into account Brumfield's past record of unblemished service for more than twenty (20) years. This Court frequently takes past records into account, when determining punishment, as it should. It is wrong to ignore an attorney's unblemished record of more than twenty (20) years, when determining his punishment.

Although summary disbarment might be appropriate for a convicted felon, it is not appropriate for every breach of ethics. An isolated incident is the sole basis in this case for destroying an attorney's career. Even a common criminal's past record is considered, when determining his sentence.

With respect to the issue of punishment, Brumfield would also ask the Court to take into account the extent of punishment it has ordered in other disciplinary proceedings. When viewed in this context, Brumfield's punishment is by far the most severe. Far more serious violations have reaped far less severe punishment.

Two points on the issue of guilt or innocence have not been sufficiently brought to this Court's attention previously. One is the lack of motive. Brumfield's law practice consistently nets him a very comfortable income. He has a lucrative plaintiffs' practice. Suffice it to say that in comparison to Brumfield's income, the $7,300.00 of which he is accused of depriving his Aunts is relatively insignificant. It is inconceivable that he would have a motive to defraud anyone of $7,300.00. It is inconceivable that he would intentionally risk disciplinary action, his excellent reputation or his very lucrative law practice over a comparatively small amount of money.

The other point is that Dr. Barrett, the witness whose testimony conflicted with Brumfield's, is not a disinterested party. On the contrary, Dr. Barrett's credibility is tainted by his selfish attempts to buy this land from Brumfield without disclosing his knowledge of mineral exploration in the immediate area. It is undisputed that Dr. Barrett knew of the mineral activity at the time he approached Brumfield. It is equally undisputed that Dr. Barrett did not disclose this knowledge to Brumfield. Dr. Barrett's efforts were thwarted when Brumfield did not sell him the land, but rather leased drilling rights to Chevron instead. Owning property adjoining this land, Dr. Barrett was the only involved person, who had delved into the value of this property. Aware of the seismographic testing and drilling in the subject area, Dr. Barrett attempted to acquire the land from Brumfield without disclosing its mineral value. It is only human nature that Dr. Barrett would not be happy with Brumfield's refusing to convey him the property. Dr. Barrett's conduct was less than honorable, and his testimony should be viewed in light of his conduct. We know that Dr. Barrett initiated contact with Brumfield, because it is unrebutted. We know that Dr. Barrett withheld information of the mineral activity on the property. We know that Dr. Barrett wanted to purchase the property for less than its market value, because he did not disclose the mineral activity. We can assume that he was disappointed not to acquire this property, but to see Brumfield learn of the mineral activity and lease the mineral rights to Chevron, because this is human nature. Are these facts not sufficient to raise a serious question as to whether Dr. Barrett offered $450.00 per acre, as testified to by Brumfield, or $700.00 per acre, as testified to by Dr. Barrett, who had an axe to grind? The figure of $450.00 per acre was not simply pulled out of the air. Moreover, the property was not sold for $700.00 per acre. The mineral rights were

leased for $500.00 per acre. The only market value relative to the actual transaction was the mineral value, and Brumfield did not learn of that value until after he purchased the property. On the other hand, Dr. Barrett was aware of the mineral value but did not disclose it.

In this Petition for Rehearing, Brumfield would first set forth a Chronology of the events which transpired and for which this Court now seeks Brumfield's disbarment. In setting forth this Chronology, Brumfield by no means is asserting agreement with it. Rather the Chronology is derived solely and purely from (1) unrebutted testimony, (2) signed and dated documents introduced into the record, and (3) from witnesses against Brumfield taken in a light most unfavorable to Brumfield.

CHRONOLOGY

(Record references: "CTR" to the Chancery Trial Record in Brumfield v. Allemandi, Cause No. 53,782 in this Court; "R" Hearing before Complaints Tribunal.)

08/03/79 - Brumfield receives telephone call from Dr. Barrett (01:00 min. call) [CTR., 155]

08/06/79 - Barrett calls Brumfield [CTR., 155-156]
Barrett states regarding conversation:

(1) Brumfield not familiar with the land;

(2) Land in the area going for $450.00 an acre;

(3) Land is of low surface value; no commercial value; scrub pine;

(4) Barrett claims to make Brumfield offer of $700.00 for fee simple title.

08/06/79 - [Same day.] Brumfield writes letter to Mrs. Allemandi advising of offer from Barrett. [R. 285]

08/10/79 - Brumfield receives telephone call from Barrett. [C.T.R. 158]

08/13/79 - Letter from Brumfield to Allemandi with check and deed. [R. 286]

08/22/79 - Letter and check from Brumfield to Ravenhorst. [C.T.R. 158]

08/27/79 - Check and letter from Brumfield to Handley and Davis. [R. 292-299]

08/27/79 - Allemandi signs Deed.

08/30/79 - Handley signs Deed.

08/31/79 - Davis signs Deed.

09/24/79 - Billy Scott Brumfield signs Deed.

09/18/79 - Brumfield visits Rushing (real estate appraisor) per Rushing's testimony. [C.T.R. 171-172; 270-271]

09/24/79 - *Brumfield contacted by B. P. Tillery regarding oil lease. First knowledge by Brumfield of oil on property.* [C.T.R. 141]

It is most earnestly submitted for this Court's consideration that the Chronology of events is crucial to a clear understanding of this case and a clearer understanding of the issues and the non-issues presented herein.

Brumfield would next like to briefly summarize the major points which will be addressed in this Brief as grounds for this Court's reconsideration of its Opinion and Order of September 10, 1986.

Your petitioner will first address this Court; finding of the existence of a fiduciary relationship between Brumfield and his aunts. It will be argued that such finding by this Court was error for the following reasons:

(a) In affidavits submitted by Brumfield's aunts, to the Complaints Tribunal, the Aunts denied the existance of *any* "fiduciary or quasi fiduciary relationship" between themselves and Brumfield; [R. 151; 152]

(b) The question of a fiduciary relationship arising from an *agency* relationship was not addressed before the Complaint's Tribunal and Brumfield has therefore had no opportunity to address that issue;

(c) Agency can only arise by consent of both the Principal and Agent. Brumfield in his testimony, and the Aunts in their affidavits *have denied the existence of any such relationship*;

(d) Dr. Barrett's testimony as a third party, is incompetent to establish an agency relationship.

Second, Brumfield will address the issue of Dr. Barrett's testimony. A careful reading of this Court's opinion of September 10, 1986, reveals that the sole basis for the finding of any misconduct whatsoever on the part of Brumfield rests squarely upon the highly suspect testimony of Dr. Barrett. Brumfield will address the issues related to the inconsistencies and lack of credibility of Dr. Barret's testimony.

The third major issue which Brumfield wishes to address is his contention that this Court's decision to impose permanent disbarment was arbitrary and capricious and constitutes a violation of the Fifth, Eighth and Fourteenth Amendments of the United States Constitution and Articles Fourteen and Twenty-six of the Mississippi Constitution. Brumfield will present this Court an analysis of prior disciplinary proceedings which have been considered by this Court together with the factual bases underlying and the disciplinary measures imposed by this Court. As will be seen, this Court's disbarment of Brumfield for the purported "misconduct" is a significantly harsher disciplinary measure than this Court has ever previously imposed for similar conduct.

In reviewing these decisions, one is forced to note the fact that all previous disciplinary matters considered by this Court have involved Mississippi attorneys, rather than an attorney from a neighboring jurisdiction who is licensed to practice in Mississippi soley by virtue of having attended the University of Mississippi School of Law. This of necessity raises questions as to whether Brumfield has been afforded equal protection under the law.

Finally, Brumfield would address questions of the denial of Due Process which were raised by this Court's Opinion and Order of disbarment as to the procedures followed by this Court in arriving at the decision of guilt, and the quantum of discipline to be imposed. This issue includes a discussion of the unconstitutionality of Disciplinary Regulation 1-102(a) as applied by this Court in its Opinion and Order of September 10, 1986.

This Court's Opinion and Order of Disbarment contained language to the effect that the "absence of contrition" displayed by Brumfield was a factor considered in arriving at the sanction of disbarment. This Honorable Court's

consideration of such a factor, together with the lack of a forum or other opportunity for Brumfield to present evidence of his good character and his fitness to practice law constitutes the denial of a right to a trial before a fair and impartial tribunal.

In disciplinary proceedings, an attorney has the unqualified Constitutional right to vigorously and unreservedly assert his innocence until such time as there has been a final adjudication of guilt. To require displays of contrition - to require an attorney to prostrate himself at the feet of the adjudicating body and beg their forgiveness while simultaneously asserting his innocence constitutes a deprivation of Due Process and of the most fundamental right to a fair and impartial hearing which is the cornerstone of our nation's jurisprudential tradition.

This Court's Opinion and Order of September 10, 1986, holds ominous portents for all attorneys licensed to practice in the state of Mississippi. Taking this Court at its literal word, attorneys in this state are effectively precluded from engaging in any type of business activity solely because of their license to practice law. An attorney making a profit on a business deal arising outside his practice of law is required to disclose that profit and refund it to those from whom he made that profit. An attorney purchasing a car, a house or a shopping center, upon resale of that property is required to refund a portion of that profit to the person or entity from whom he obtained it because the failure to do so is not "an honorable thing". This Court's opinion would put attorneys in a fiduciary relationship not only with their clients, but indeed with the world at large. The imposition of such a duty is inconceivable, impractical, and wrong.

I.

This Court Erred in Its Opinion and Order of September 10, 1986, in the Finding a Fiduciary Relationship Between Brumfield and his Aunts;

(A) The testimony of Brumfield and the affidavits from his aunts conclusively establish the absence of any fiduciary relationship derived from any basis whatsoever.

Brumfield would respectfully direct this Court's attention to two affidavits which were filed in Brumfield's behalf before the Tribunal. These affidavits located on pages 151 and 152 of the record, constitute some of the most important evidence before the Tribunal and this Court. These affidavits from two of Brumfield's aunts specifically and unequivocably *deny the existence of any fiduciary or quasi-fiduciary relationship between Brumfield and his aunts.* There is no testimony anywhere in the record from the parties to this purported "fiduciary relationship" (i.e. between Brumfield and his aunts) which establishes the existence of such a fiduciary relationship on any basis whatsoever.

There is not a question of conflicting evidence or the credibility of witnesses when one is attempting to discern the existence of anything other than an arm's length relationship between Brumfield and his aunts. The fact is that no where in the record as was considered by this Court is there any testimony form either Brumfield or from his aunts that they relied upon him as a fiduciary.

(B) Testimony of the dentist, Dr. Barrett, is incompetent to establish a fiduciary relationship as between Brumfield and his Aunts.

It is important to note that this Court specifically declined to rely on *any* previous testimony from the Aunts

because the Aunts were not called as witnesses. This means the *only* testimony which would establish a fiduciary relationship came from Dr. Barrett. It is that simple. There is testimony from Dr. Barrett as to what *he* thought the relationship was between Brumfield and his aunts, but that testimony is irrelevant. The testimony of a third person cannot be used to establish a fiduciary relationship. [See generally *Woods v. Nichols*, 416 So.2d 659 (Miss. 1982); *Austin v. Gulf States Finance Company*, 308 So.2d 90 (Miss. 1975); for specific elements of agency see *Butler v. Bunge, Corp.*, 394 F.Supp. 47 (Sd.Miss. 1971).] The only persons who could say that such a fiduciary relationship existed are Brumfield's aunts. Not only is there an absence of such testimony from the Aunts in the record before this Court, but there is the affirmative affidavit that in fact such relationship did not exist. [R. 151-152.]

(C) Brumfield's purported role as an "Agent" was not asserted until this Court's Opinion of September 10, 1986. Throughout the proceedings before the Complaints Trubunal below and in the briefing before this Court, the sole grounds for the existence of a fiduciary relationship between, Brumfield and the Aunts has been the existence of a biological relationship between Brumfield and his Aunts. The assertion for the first time in this Court's Opinion that a fiduciary duty existed as a result of an *agency* relationship constitutes a denial of Due Process and is contraindicated by notions of substantial justice and fair play.

At the hearing before the Complaint Tribunal, Counsel for the Complaints Committee of the State Bar Association, Andrew Kilpatrict, stated clearly and unequivocably that the sole grounds for the state bar's assertion of the existence of a fiduciary relationship between Brumfield and his aunts was the existence of a "biological relationship" between Brumfield and his aunts. R. 449-450 This statement by

Complaint's Counsel drew the battle lines in the hearing before the Tribunal and formed the basis for the hearing. In spite of this fact, this Court's opinion of September 10, 1986, holds that:

> It is clear that Brumfield acted on behalf of his aunts as their agent. The letters he wrote his aunts and his own testimony clearly establishes that he purported and ostensibly undertook to act for everyone's common benefit.

Courts Opinion at 13.

In view of Complaint Counsel's assertion that the sole basis for the finding of fiduciary relationship by the State Bar was the biological relationship, it is respectfully submitted that this Court's finding the existence of a fiduciary relationship on grounds hitherto unasserted constitutes a denial of Due Process. Brumfield would respectfully direct this Court to its decision in *Mississippi Attorney v. State Bar*, 471 So.2d 1230 (Miss. 1985), where an attorney was originally charged with a "breach of fiduciary capacity and breach of professional responsibility". *Id.* at 1232. In spite of this fact, the Complaint's Tribunal eventually issued a public repremand on the grounds that there was a violation of the conflict of interest provisions of DR5-101 (A). This Court held that in accordance with fundamental notions of Due Process and fair play and substantial justice that an attorney was entitled to a hearing *on the grounds* for which he was ultimately sanctioned.

Brumfield in the case at bar was found by this Court to have been "acting in a representative and fiduciary capacity which he had undertaken [and to have] deliberately cheated and defrauded his Aunts", Due Process notions at a minimum require adherence to the provisions of Mississippi Rules of

Civil Procedure 9 regarding fraud, mistake or condition of mind. Pleading such matters with particularity is vitally important when confronting the question of an attorney's fitness to practice law.

It is disturbing to read the original complaint filed on behalf of the State Bar and realize that at no time is the existence of a fiduciary duty *pleaded*. Nevertheless, Brumfield has been prosecuted for the violation of a fiduciary duty. At the hearing before the Tribunal the basis of this fiduciary duty was alleged to have been blood kinship. R. 446-450. Notwithstanding the allegation, this Court has now determined that there was a breach of a fiduciary relationship arising as a result of an agency relationship between Brumfield and his Aunts. Agency has never been pleaded at any time during these proceedings and it is respectfully submitted that to put a bullet in the brain of Brumfield's legal career with a finding of agency when Brumfield has never had the opportunity to respond to that claim constitutes a denial of Due Process. See *A Mississippi Attorney v. Mississippi State Bar*, 471 So.2d, 1230 (Miss. 1985); see also *Louis Myers and a Mississippi Attorney v. Mississippi State Bar*, 480 So.2d, 1080 (Miss. 1985).

As previously stated, Due Process notions require at a minimum the adherence to Mississippi Rule of Civil Procedure 9 relating to the specificity with which fraud must be pleaded. It is respectfully contended that the full compliance with requirements of Due Process in such a quasi-criminal proceeding is mandated by the 8th Amendment to the United States Constitution and Article 26 of the Constitution of the State of Mississippi. Both constitutional provisions require that in a criminal proceeding the accused be informed of the nature of the charges against him. See the United States Constitution Amendment 8; Mississippi Constitution Article 26. See also *Netterville v. Mississippi State Bar*, 397 So.2d 878 (Miss. 1981).

Finally, it should be noted that there is no basis in the record for the assertion of an agency relationship. An agency relationship is one which exists by virtue of agreement on behalf of the principal that the agent shall act for and on his behalf an agreement by the agent to act for and on behalf of the principle. Unless both acts of consent are manifested and proof exists in the record to support the finding of such an agency relationship, one cannot establish the existence of that relationship. [See *Butler v. Bunge, Corp.*, 394 F.Supp. 47 (Sd.Miss. 1971).]

Not only is there no testimony from Brumfield in the record establishing the existence of an agency relationship from Brumfield, two of Brumfield's aunts have filed affidavits expressly denying the existence of any *fiduciary* or *quasi-fiduciary* relationship between themselves and Brumfield whatsoever. See record at page 150.

II.

The sole testimony in the record upon which a decision to impose disciplinary measures against Brumfield is the testimony of Dr. Barrett. Dr. Barrett's testimony is inconsistent, and suspect and therefore does not rise to the level of clear and convincing evidence which must exist prior to the imposition of disciplinary measures.

As the sole testimony in the record upon which the decision was made to disbar Brumfield, Dr. Barrett's testimony is inconsistent and suspect and does not rise to the level of clear and convincing evidence which must exist prior to the imposition of disciplinary measures.

A very careful comparative analysis of Barrett's testimony at the hearing with his testimony at the trial before the Chancery Court, at Walthall County, reveals startling inconsistencies. Dr. Barrett was highly motivated not to tell the

truth. His testimony, as the ONLY testimony forming any basis whatsoever for findings of malfeasance by Brumfield does not rise to the level of clear and convincing evidence which is required prior to the imposition of any sanctions by this Court.

From Barrett's own testimony at the trial in Walthall County, it is clear that Barrett knew of the potential for oil on the land prior to his contacting Brumfield. See Chancery Trial Record at p. 155-168[1]. Barrett had seen a map owned by a land man representing an oil company showing ownership of the property and was aware of the fact that the property had been subjected to seismic testing on two separate occasions. See Chancery Trial Record at 155. Barrett did not own the mineral rights on his own 206 acres. R. 208. Barrett testified that he contacted Brumfield on August 6, 1979. At that time he testified that he "thought" that Brumfield was acting on behalf of his aunts. Yet it is unequivocably set forth in the record that Brumfield had never contacted his aunts about the land and therefore could not have been authorized (*as between Brumfield and his aunts*) to act on their behalf. What Dr. Barrett *thought* as to Brumfield's authorization is irrevelant and immaterial insofar as the issues presented to this Court.

At the trial in the Chancery Court of Walthall County Barrett testified that Beau asked him what the land was like and indicated that he was not familiar with the land, Brumfield not know what it was worth. On page 156 of the transcript in cause No. 53,872 *H. Alva Brumfield, III, v.*

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1. References to the "Chancery Trial Record" are references to this Court's Record in the case of *Brumfield v. Allemandi*, Supreme Court of Mississippi, No. 53,872. References to the Record before the Complaint's Tribunal are referred simply as Record or "R".

Elizabeth B. Allemandi, et al, Dr. Barrett testified:

> "evidently he was not familiar with the land and he wanted to know what land was selling for and I told him mostly land was selling for $400.00 to $450.00 an acre. Anybody would assume the first offer was an offer and he wanted to know how much I was willing to give, *and naturally like everybody else as little as possible* . . .
> Q. When you told Mr. Brumfield the going price an acre was $400.00 to $450.00 what did you tell him as to the type of the land?
> A. The land was low surface value, of no commercial value, scrub pine.

Brumfield v. Allemandi, Cause No. 53,872 transcript at page 156.

Barrett's testimony was clear before the Chancery Court that he told Brumfield that the land was low surface value, no commercial value, scrub pine. *Id.* Barrett also testified that he was aware of the fact that Brumfield was not familiar with the land in question whatsoever. Chancery Trial Record at 156. Nonetheless, Barrett was familiar with the land having owned adjacent property since 1973. Barrett testified that he told Brumfield that the land in the area was going from $400.00 to $450.00 an acre. Chancery Trial Record at 156. Barrett did not disclose at any time the fact that oil companies had shown an interest in the land.

What is clear is that Barrett told Brumfield that the land in the area was of low commercial value and that land in the area was going for $400.00 to $450.00 an acre. Barrett's attempt to "correct" his previous testimony before the Tribunal underscores his lack of believability. These discrep-

ancies are further indicia of Barrett's lack of credibility. It is vital to remember that the $400.00 to $450.00 an acre to which Barrett testified he told Brumfield was the value of land in the area is *precisely what Brumfield offered his aunts* for the property. Brumfield's action, even construed in a light most disfavorable to Brumfield, does not warrant disbarment.

Barrett testified that he was aware that Brumfield was not acting "in a complete representative capacity" [C.T.R. 157]. Therefore, the use of Barrett's testimony for the imposition of a fiduciary responsibility upon Brumfield is erroneous.

Regardless of whether Barrett in fact offered $450.00 an acre or $700.00 an acre, he testified clearly and unequivocably that the only offer he made for the property in question was for the *entire fee simple ownership* of all the property, all the timber, and all the minerals. On page 165 of the transcript of the trial at the Chancery Court of Walthall County, Barrett specified that the only offer which he made was for all the property and he would not be interested in purchasing less than that. There was uncontradicted, unrebutted testimony that Brumfield *could not* have provided the entire fee simple ownership of the property to Barrett as a result of a tax audit being conducted against his sister (who owned one-fifteenth of the property). R. 468. How can Brumfield be disbarred for allegedly misrepresenting an offer which did not exist? How can Brumfield be disbarred for offering to purchase the land from his aunts for what Barrett had told him land in the area was worth?

Brumfield cannot over emphasize the importance of recognizing Dr. Barrett's testimony as inherently lacking in any credibility whatsoever. From Barrett's own testimony it is apparant that Dr. Barrett lied about the timber on the property. At the trial in Chancery Court he testified that he

told Brumfield that the land was "scrub pine". In spite of that statement, he testified on pages 156 and 157 of the Chancery Court transcript that he was willing to offer a premium above the normal value of the land as a result of the timber. To further compound the lie, Barrett testified that he was not aware of the value of the timber *until he had the property cruised for timber* - the cruising of which timber took place *after* he supposedly made Brumfield an offer for the property. [C.T.R. 163]

Points of consideration in evaluating Barrett's testimony when looked at *in toto* clearly reveal the lack of credibility of such testimony:

(1) If *anyone* knew what the land was worth it was Barrett;

(2) Barrett's own testimony was that land in area was worth $400.00 to $450.00 an acre (Chancery Trial Record at 156.);

(3) Barrett knew Brumfield was not aware of what the land was worth, *Id.*;

(4) Barrett believed in paying "as little for property as possible", *Id.*;

(5) Barrett told Beau the property was of low surface value, no commercial value, scrub pine, *Id.*;

(6) Barrett knew of the interest of the oil companies in the property, *Id.* at 155;

(7) Barrett lied about the timber on the property.

III.

The Order of Disbarment was Arbitrary and Capricious in that the Disbarment was Inconsistent with Sanctions Imposed by This Court in Other Disciplinary Proceedings.

Brumfield has collected the cases handed down by this Court involving attorney discipline in the past years. Careful examination of the factual basis underlying each one as compared with the discipline meted out by this Court clearly reveals that this Court's decision to impose permanent disbarment on Brumfield was wholely inconsistent with sanctions imposed in previous cases under similiar factual situations.

Brumfield would direct the Court's attention to Appendix "A" attached to and made a part of this Brief in Support of Petition for Rehearing. In the appendix are cases where this Court has examined particular conduct of attorneys and rendered decisions as to the imposition of disciplinary measures. An examination of the collected cases revealed that the imposition of disbarment has been exclusively reserved for those situations when an attorney was found guilty of the perpetration of a felony or for some other type of *indictable* offense such as blackmail or imbezzlement.

In particular Brumfield would direct this Court's attention to its recent decision in *Mississippi State Bar Association v. Strickland*, 492 So.2d 567 (Miss. 1986). In the Strickland case, this Court held that:

> Strickland, acting within the bounds of the attorney-client relationship "took money belonging to estates he presented and converted it to his own use. This involved moral turpitude.".

Id. at 571.

For such an offense Strickland had his license suspended for three years. For an action clearly within the bounds of the attorney-client relationship, involving a *violation of that trust*, and the *embezzlement* of funds from a client this Court handed down a three year suspension. Yet in the case at bar the testimony in the record (when considered in a light most favorable to the State Bar) indicates that Brumfield purchased land from his aunts for a price Dr. Barrett admitted was in accordance with the price for which land in the area was being sold. To have purchased this land when the Aunts swore there was no fiduciary relationship, that there was no relationship which could even be remotely categorized as "quasi-fiduciary", hardly warrants the imposition of a permanent disbarment. Such actions can hardly be equated with the actions of an attorney in embezzling $25,000.00 from a client.

IV.

This Court's ruling disbarring H. Alva Brumfield, III, disbarred from the practice of law in the State of Mississippi, constituted a denial of Due Process,

(A) The procedure followed by this Court in arriving at the decision for permanent disbarment constituted a deprivation of Due Process under the 5 and 14 Amendments of the United States Constitution and Articles 14, 26, and 28 of the Mississippi Constitution.

The Opinion and Order of this Court handed down September 10, 1986, indicates that the decision to permanently disbar Brumfield from the practice of law in the state of Mississippi was derived from two considerations. The first of these was that the conduct of Brumfield "evinces a dishonesty which varies completely with the integrity basic to the practice of law" Opinion at fourteen. Secondly, this Court held:

> Moreover, we find a dismaying absence of contrition on the part of Brumfield, no recognition whatever by him of any wrong-doing.

Id. at 16.

As this Court is well aware there has been a heated factual dispute as to the actions which took place between Brumfield, Dr. Barrett and Brumfield's aunts. If this Court should confirms to its determination of September 10, 1986, that those actions did take place in accordance with the allegations of the Complaint, it is respectfully submitted that Brumfield is entitled now to put on evidence of his good character and of his fitness to practice law as evidence which must be considered by this Court prior to the determination and imposition of any type of disciplinary sanction.

Until the rendition of a final adjudication on the factual basis unlying the claim for disciplinary sanctions, there is no appropriate forum for the presentation of evidence and testimony relating to the long years which Brumfield has engaged in the practice of law in a manner which has been painfully scrupulous and denoted by an unswerving sense of honesty and integrity. A decision to disbar Brumfield, or any attorney, cannot be rendered until such time as Brumfield has an opportunity to present factors in favor of the mitigation of sentence.

By way of analogy, Brumfield would refer this Court to the procedures which have been mandated by the United States Supreme Court with regards to death penalty cases. Brumfield would suggest that said procedures are no less applicable in a disciplinary matter particularly in view of the fact that the death of a legal career is at issue. *Gregg v. Georgia*, 428 US 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Jackson v. State*, 337 So.2d 1242 (Miss. 1977).

By way of proffer, Brumfield has attached hereto and made a part of this Petition for Rehearing as Exhibit "B" letters from attorneys knowledgeable of his character and professional integrity by virtue of having litigated *against* him over a period of years. These letter, including those from present and past presidents of the Louisiana Bar Association, professors and distinguished members of the Louisiana Bar, all speak to the highest sense of personal and professional integrity and honor which these attorneys have witnessed in their day-to-day relationships with H. Alva Brumfield, III. Such factors must be considered by this Court prior to the rendition of a decision imposing disciplinary sanctions.

This Court has had no opportunity to receive evidence from Brumfield regarding the personal cost these proceedings have exacted; a cost which could easily have been avoided were it not for a deep and abiding sense of truth and justice. Brumfield could have settled the original trial between himself and his aunts. He did not do so because the allegations which they raised were not true. Brumfield could have accepted the decision of the Tribunal imposing a ninety day suspension. He did not do so because the allegations were not true. As may be seen in the testimonials contained in Exhibit "b", this dedication to truth and personal integrity is something for which Brumfield is known by his peers as a factor which must be considered by this Court and which Brumfield must be given an opportunity to present. It is submitted that such testimony of the personal costs which have been inflicted on Brumfield would warrant a mitigation of that sentence of disbarment.

The second factor which this Court indicated it considered in arriving at the imposition of permanent disbarment was the absence of a lack of contrition on the part of Brumfield and a recognition by him of some wrong doing. To require the expression of such contrition as a condition for sentencing

clearly constitutes a denial of Due Process. To require expressions of contrition as a factor in the sentencing of an attorney to excommunication and banishment from the Brotherhood of the profession is to deny him the right to a fair trial at which he may assert his innocence, free of the chilling effect such assertion have on his potential punishment. Both the constitutions of the United States and the State of Mississippi, guarantee any person to due process of law prior to deprivation of their life, liberty or process. To require as a part of a person's defense, a confession of guilt is to require an attorney to surrender the right to a hearing before a fair and impartial tribunal on the very facts which the State Bar alleges warrant disciplinary sanctions. Such a chilling effect on an attorney's right to a hearing before a fair and impartial tribunal could not have been intended by this Court and must not be allowed to remain the law of this state.

It is submitted that the procedures which have been set forth in capital cases would be most appropriate in the case at bar and similiar cases. If this Court insists on holding to considerations of (1) overall fitness to practice law and (2) expressions of apology and contrition in determining the sentence to be imposed, it is respectfully suggested that a bifurcated hearing, first on the question of guilt or innocence of the factual allegations contained in the Bar complaint, and then on the factors to be considered by this court in the imposition of disciplinary measures, be adopted. Such a procedure is the *only* way of guaranteeing Brumfield even *de minimus* Due Process.

(B) The factors applied by this Court in its application of Disciplinary Rule 1-102(a) render that disciplinary rule unconstitutionally vague.

This Court held in its opinion of September 10, 1986, that:

> all this aside the very suspicious circumstance indicates that Brumfield *probably* knew the land was worth far more than $700.00 an acre.

Court opinion at 13 (emphasis added).

The testimony from Dr. Barrett at the trial in the Chancery Court in Walthall County conclusively demonstrates that Brumfield was totally unaware of the value of the property whatsoever. Chancery Trial Record at 156. Brumfield testified that he had never seen the property. R. 483. It is respectfully suggested that suspicious circumstances and the conclusions as to what Brumfield "probably" knew have no basis in the record. Such "probabilities" do not rise to the level of clear and convincing evidence which is required for the imposition of disciplinary measures against an attorney. A disciplinary rule which may be applied in such a way as to impose the disciplinary sanction of disbarment as a result from both "very suspicious circumstance" together with what an attorney "probably" knew is unconstitutionally and impermissibly vague in that it fails to afford a sufficiently clear standard by which all attorneys in this state may structure their conduct.

On page 13 and page 14 of this Court's Opinion and Order of September 10, 1986, the Court refers to Brumfield's failure to do "the honorable thing and reconvey [] his aunts' interest back to them . . ." It is respectfully submitted that such a reconveyance is not required by the Code of Professional Responsibility or by the law. It is unquestioned and unequivocably established in the record that Brumfield did not learn of the oil companies interest in the property until

over a month following the conveyance of the property by the aunts to Brumfield. This factor must be recognized by this Court. Brumfield never sold the land in question to Barrett. There was no conveyance of the property at a higher price than Brumfield paid his aunts. The money received as a result of his ownership of the property was money that arose from the granting of an oil and gas lease on the property. The evidence in the record at the trial in Walthall County and in the record made before the Complaints Tribunal is consistent and unequivocal that Brumfield was not aware of oil activity in the area until he was contacted by Mr. B. P. Tillery on September 24, 1979. This was over one month following his Aunts' conveyance of the property. For an attorney to be required to *reconvey property* or to *reimburse* profits made on a business deal based upon facts learned *following* the acquisition of the property, is to preclude attorneys from engaging in any type of business relationship outside their practice of law. It is respectfully submitted that this Court's Opinion and Order setting forth a duty incumbent upon Brumfield (and all attorneys) to reconvey the property upon *subsequently* learning of the oil and gas value of the property constitutes error. To impose such a duty upon all attorneys of this state is a concept which should be of such concern to the attorneys of this state as to warrant the filing of an *amicus curiae* brief by the State Bar Association.

CONCLUSION

What was the duty owed by Brumfield to his aunts and what was the basis for that duty? The answer is simple. There was no basis for the duty to the aunts. This Court has held the mere existence of a blood relationship is insufficient for the imposition of a fiduciary duty. *An Attorney v. Mississippi State Bar*, 420 So.2d 1367, 1369 (Miss. 1982). This Court has held that there was no attorney client relationship

between Brumfield and his aunts. This fact is confirmed by the affidavits of the aunts submitted to the Complaints Tribunal. Clearly there can have been no agency relationship when both Brumfield and the aunts denied the existence of such an agency relationship. Absent the existence of such a fiduciary relationship it becomes apparent that Brumfield and his aunts stood at an arms length in a business deal.

What was the duty owed by Brumfield to his aunts? To convey an offer from a third party? If such was the case then there was no offer because the only offer was to purchase all the property, the entire fee. Again it is important to note that Brumfield never sold the property not realized the difference between the $450.00 he offered his aunts and the $700.00 purportedly offered by Barrett. Was Brumfield required to make his own offer for the property? If so at what price? It is established by Dr. Barrett's own testimony that the property in the area was going for between $400.00 and $450.00 an acre. This is the price Brumfield offered his aunts; the price Barrett admits he told Brumfield that the property in the area was worth. Brumfield had no idea as to the property's worth.

Testimony as to the subsequent oil lease is irrelevent. There is no question that Brumfield was not cantacted by Mr. Tillery of the oil company until at least a month after he had purchased the property from his aunts.

Testimony of subsequent appraisals of the property's value are irrelevent. The question is: "what did Brumfield know at the time that he purchased the property from his aunts." Again at the point of the laboring the obvious, Brumfield knew that the land in the area was being sold for between $400.00 and $450.00 an acre. The only person who knew that the property might be worth more was Dr. Barrett - a man who convicts himself by his own words when he said he

wanted to get the property for as little as possible. Isn't it only logical that a person wanting to buy a piece of property for as little as possible from a person who has no idea as to its value is going to offer what other property in the area is being sold for?

Does the fact situation revealed by the testimony constitute sufficient grounds, by clear and convincing evidence for the gutting of the professional career of a man who is held in high esteem by his peers for his scrupulous adherence to honesty and fair play. Is the suspect word of a disgruntled would be purchaser whose own testimony concerning his knowledge of the value of the timber is hopelessly confused in self contradictory, sufficient to put the professional career of H. Alva Brumfield to death? This Court is respectfully implored to say no.

Brumfield is a Louisiana attorney who is licensed to practice in Mississippi only by virtue of having attended the University of Mississippi School of Law. It is upon a rare occasion that he even appears in a Mississippi Court, whether State or Federal. Yet what was conceived by both Brumfield *and his Aunts*, as essentially a family dispute has resulted in the ultimate sanction which may be suffered by an attorney: DISBARMENT. Some actions warrant such an extreme penalty. Brumfield's do not.

Brumfield has not been treated fairly or in accordance with notions of substantial justice by the Courts of this state. He has been denied Due Process. His decision to assert the truth and justice of his position has cost him an increased sanction by this Court. This was done without notice to Brumfield that the "rules of the game" were being changed and that what was once an "attorney - client" relationship, then a "biological relationship" was now an "agency relationship".

Brumfield has not been treated fairly. Before this Court can say that he should suffer the ultimate sanction of disbarment they should hear from the truest testimony as to the measure of a man: the quality of his opponents. Brumfield respectfully asks this Court to closely examine the letters which have been submitted by his worthy adversaries in the Louisiana Bar.

Finally, Brumfield would implore this Court for the opportunity to present his argument and this Petition to an En Banc Hearing of the Mississippi Supreme Court. Disciplinary proceedings are the only kind that this honorable body acts as the finder of fact. How can this Court act as finder of fact when it has not had the opportunity to look into the eyes and listen to the voice of Brumfield and those who would testify against him? How can this Court until each and every member has had the opportunity to observe the countenance of each witness under the truest test of cross examination? How can this Court decide who is telling the truth and who is not when they have never even seen the faces of the parties involved? For a jury to so presume would clearly constitute error. Can Brumfield not ask as much of this Court? Brumfield asks this Court for the process which is his due and to reconsider its order disbarring him from the practice of law.

RESPECTFULLY SUBMITTED,

By: H. ALVA BRUMFIELD, III

By: RUSHING & GUICE

By: s/s NICHOLAS V. WISER
NICHOLAS VAN WISER

CERTIFICATE

I, NICHOLAS VAN WISER, of counsel for H. Alva Brumfield, III, to hereby certify that I have this date mailed a true and correct copy of the above and foregoing Brief, postage prepaid, by means of United States Mail to Michael Martz, complaint counsel for the Mississippi State Bar, at his usual mailing address of Post Office Box 2168, Jackson, Mississippi 39205; to the Honorable Alfred G. Nichols, at his usual mailing address of Post Office Box 32, Brandon, Mississippi 39042; to the Honorable John W. Prewitt, at his usual mailing address of 914 Grove Street, Vicksburg, Mississippi 39180; and to the Honorable Fred Ross, Jr., at his usual mailing address of Post Office Box 1669, Jackson, Mississippi 39205.

This the _____ day of October, 1986.

NICHOLAS VAN WISER

APPENDIX H

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

BEFORE THE COMPLAINTS TRIBUNAL OF THE MISSISSIPPI STATE BAR ASSOCIATION

CONFIDENTIAL MISCELLANEOUS NO. 173

MISSISSIPPI STATE BAR ASSOCIATION,
Complainant

versus

H. ALVA BRUMFIELD, III,
Respondent

FILED: 7-11-84

BE IT REMEMBERED: that the above styled cause came on to be heard, being continued from November 12, 1984, in the offices of Attorney's Conference Room of the Mississippi Supreme Court, Gartin Building, Jackson, Mississippi, on December 17, 1984, before a Complaints Tribunal, and that the following proceedings were had, to-wit:

VOLUME II, RECESSED HEARING

TRIBUNAL MEMBERS:

JUDGE ALFRED NICHOLS, PRESIDING
JUDGE JOHN PREWITT
JUDGE FRED ROSS

APPEARANCES:

ANDREW J. KILPATRICK, ESQUIRE
Complaints Counsel
Mississippi State Bar Association
620 North State Street
Jackson, Mississippi 39205
REPRESENTING THE MISSISSIPPI STATE BAR ASSOCIATION

BILLY GUICE, ESQUIRE
NICHOLAS VAN WISER, ESQUIRE
Rushing & Guice
P. O. Box 153
Biloxi, Mississippi 39533

CRYMES G. PITTMAN, ESQUIRE
Cothren & Pittman
425 Tombigbee
Jackson, Mississippi 39205
REPRESENTING THE RESPONDENT

ALSO PRESENT:

MR. & MRS. H. ALVA BRUMFIELD, III
CONNIE JELLIFFE
JOHN JEFFRIES
WILLIAM BRUMFIELD

REPORTED BY: LISA C. CAMP. Court Reporter
& Notary Public

day sense of the word that you would go and hire an attorney. I don't believe it can be denied. I think their testimony says that he was not employed as an attorney. But what we are proposing or what we are saying is that Mr. Brumfield acted in a fiduciary relationship with these ladies during the purchase and the transfer of this property. In that capacity, he misrepresented certain items, certain material facts to these ladies supposedly to reap the benefit at a later date. I do not believe that there can be a finding at this point that there was a true attorney/client relationship. But I do believe there was a fiduciary relationship that existed.

BY JUDGE PREWITT: What is your response to Mr. Guice on the point *assuming* that Mr. Brumfield did everything he has been accused of by the Bar – pardon me for my voice. I have had a little difficulty with the weather or something or a microbe of some kind. But assuming that he is guilty of it, would that reach the cases that require sanctions, assuming that it didn't involve moral turpitude?

BY MR. KILPATRICK: Yes, sir, it is our position that it would.

BY JUDGE NICHOLS: Is it your position that this type of conduct, if it's true, does involve moral turpitude, as interpreted by the case?

BY MR. KILPATRICK: We haven't charged him with moral turpitude. But that's a specific disciplinary rule. That's DR1102A5 and it is not a charge against Mr. Brumfield, that it was a violation or crime or illegal conduct involving moral turpitude. It was a charge that there was a fiduciary relationship between Mr. Brumfield and the ladies, and that based on that relationship he owed a duty to be honest and fair in his dealings with them.

BY JUDGE PREWITT: How did that arrive? That's giving me some trouble. If there wasn't any attorney/client relationship, what was the fiduciary relationship? What responsibility was owed, if any, by Brumfield to his aunts?

BY MR. KILPATRICK: I believe that the testimony of the aunts will reflect that they placed total trust in Mr. Brumfield to be honest and fair with them about the dealings on the property. The testimony also would reflect that with the exception, I believe, of one of the ladies, these ladies have not seen this property in some 30 to 40 years. Mr. Brumfield contacted, of course, Mrs. Allemandi and advised her that he had an offer to sell the property for $450 an acre. The testimony of Dr. Barrett was that his offer had been $700 an acre.

BY JUDGE ROSS: If you don't mind, let me interrupt you on that point. It's been bothering me. Excuse me for interrupting. We heard the doctor testify at the last session, and I would assume that Mr. Brumfield, does he take the position that the doctor is not telling the truth, that he did not receive that offer? Is that contained in all those other proceedings, or did they get into that?

BY MR. KILPATRICK: Based on everything else, I would say that Mr. Brumfield's position was that the offer, as he understood it, was $450 an acre.

BY JUDGE ROSS: That is a point in dispute as to whether or not the offer was 700 or 450?

BY MR. KILPATRICK: Yes, sir, I know it is, because it was not an admitted portion of the formal complaint.

BY JUDGE ROSS: Is there any other evidence or testimony to corroborate that of the doctor who testified before?

BY MR. KILPATRICK: No, sir.

BY JUDGE ROSS: Or any documentation? I know the Chancellor made his finding in the decree, but I am talking about is there any other documentation other than the Chancellor's ruling to corroborate the testimony of the doctor concerning whether his offer was 450 or 750 or whatever?

BY MR. KILPATRICK: No, sir, none that I can recall.

BY JUDGE PREWITT: I want to ask – going back and I will certainly yield to what my colleague asked, but in absence of a client/attorney relationship and what little I have read that these aunts said, and I haven't read it carefully, but there was not much contact – I think one of them stated that they had been in the home of Mr. Brumfield on one occasion. It troubles me and it concerns me, and I want you to give me the benefit of your thoughts and the Bar's thoughts, how did a fiduciary relationship arise except by kinship? Now, I am – that troubles me a good bit. I have read this stuff and I want to know how a fiduciary relationship arose between these aunts in the absence of any blood tie?

BY MR. KILPATRICK: I don't know that if there had been an absence of blood tie that there would have been this fiduciary relationship. The aunts, and their testimony will reflect, relied exclusively on Mr. Brumfield. I believe their testimony would reflect that they trusted him to be honest and up front with them and to advise them of whether or not they were getting the best deal. I think when you place someone in a position of that reliance, and I think that the record would reflect that Mr. Brumfield was aware that they were relying on him.

BY JUDGE PREWITT: Would you exact the same relationship if there had been no blood tie?

BY MR. KILPATRICK: I don't believe – you are asking me to give an opinion based on facts that – I don't think I could do that.

BY JUDGE PREWITT: I am just asking you what the Bar's position would be if there had been no blood relationship. Would there have been in your judgment, and I guess that's what – just all gets down to your opinion, Andy.

BY MR. KILPATRICK: Absent a family relationship would there have been a fiduciary relationship? I would probably say no, sir, I don't think we could.

BY JUDGE PREWITT: Let me ask you this one further thing, and I am not trying to put you on the griddle.

BY MR. KILPATRICK: I am used to it.

BY JUDGE PREWITT: I have got really deep concerns about this. What motivation or what consideration do you think flowed from the aunts to Mr. Brumfield to cause him to act in a less than arm's length transaction?

BY MR. KILPATRICK: What consideration flowed from them?

BY JUDGE PREWITT: Uh-huh.

BY MR. KILPATRICK: I don't understand what you are saying.

BY JUDGE PREWITT: I never was clear and I wondered if you were clear that they imposed any type relationship

that would be considered a trust relationship in him engaging in the negotiations for the sale of this land? I never know – what I am actually asking you, did they ever ask him to act for them in any capacity? I never determined that.

BY MR. KILPATRICK: I would probably say the record would reflect that they did not ask him to specifically act in any capacity. The testimony, I believe, would reflect that the matter of selling this property first came up in January of 1979 in a conversation between Mr. Brumfield and one of the ladies. Nothing futher occurred on it until the latter part of 1979 when, I believe, Dr. Barrett's offer came in. To say – and in answer to your question of whether or not anyone specifically asked him

APPENDIX I

IN THE SUPREME COURT OF MISSISSIPPI

(BEFORE A COMPLAINT TRIBUNAL)

CONFIDENTIAL MISC. NO. 173

MISSISSIPPI STATE BAR,

Complainant

versus

H. ALVA BRUMFIELD, III,

Respondent

FORMAL COMPLAINT

COMES NOW, the Mississippi State Bar, Complainant in the above styled and referenced cause, by and through its duly appointed Complaint Counsel, and files this its Formal Complaint against Respondent, H. Alva Brumfield, III, and in support thereof would most respectfully show unto this Honorable Tribunal the following facts to-wit:

I.

That Respondent is a nonresident of the State of Mississippi whose last known residence address was 509 St. Louis Street Baton Rouge, Louisiana, and that pursuant to Rule 16 of the Rules of Discipline for the Mississippi State Bar service of process in this matter may be had upon the Executive Director of the Mississippi State Bar at 620 North State Street Jackson, Mississippi.

II.

That at all times hereinafter mentioned Respondent was a member of the Mississippi State Bar subject to the disciplinary jurisdiction of the Supreme Court of Mississippi and its disciplinary agencies.

III.

That based upon facts more fully hereinafter set out, and upon information and belief which Complainant verily believes to be true, Respondent has demonstrated unprofessional or unethical conduct and conduct evincing unfitness for the practice of law which constitutes legal grounds for discipline to be imposed against Respondent.

IV.

That this Formal Complaint is filed pursuant to a directive issued by the Committee on Complaints of the Mississippi State Bar to Complaint Counsel dated June 13, 1984, and received in the offices of Complainant on June 14, 1984. That a copy of said directive is attached hereto as Exhibit One (1) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

V.

That Respondent owned a 1/15th interest in certain real property lying and being situated in Lamar County, Mississippi, said interest being owned in co-tenancy with the following named individuals:

Georgia Rae B. Davis - 1/5th interest
(hereinafter referred to as Davis)

Lucy B. Handley - 1/5th interest
(hereinafter referred to as Handley)

Elizabeth B. Allemandi - 1/5th interest
(hereinafter referred to as Allemandi)

Billy Brooks Brumfield - 1/5th interest
(hereinafter referred to as Billy Brumfield)

Julia B. Sims - 1/15th interest
(hereinafter referred to as Sims)

William P. Brumfield - 1/15th interest
(hereinafter referred to as W. Brumfield)

VI.

That as previously alleged, said real property was located in Walthall County, Mississippi and is more particularly described as follows to-wit:

> All that part of the Southwest Quarter of Section 18, Township 2 North, Range 12 East, lying south of Knoxo public road, Walthall County, Mississippi, containing 36 acres, more or less.

VII.

That on or about August 6, 1979, Respondent was contacted by Dr. John C. Barrett, hereinafter referred to as Barrett, who then offered Respondent the sum of $700 per acre for the purchase of said property.

VIII.

That by letter dated August 6, 1979 Respondent advised Allemandi that an offer had been made for the purchase of said property but advised Allemandi that the amount of the offer was $450 an acre. That a copy of said letter is attached hereto as Exhibit Two (2) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

IX.

That by said letter shown as Exhibit Two (2), Respondent advised Allemandi that the funeral expenses for Bert C. Brumfield, deceased husband of Billie Brumfield and hereinafter referred to as Bert Brumfield, would be paid from that portion of the proceeds payable to Respondent and that said statement was made by Respondent to further induce the parties into agreeing to the sale of said property.

X.

That by letter dated August 13, 1979 Respondent forwarded to Allemandi Respondent's check in the amount of $3,240 together with a warranty deed for execution by Allemandi. That a copy of said letter, together with a copy of said check and a copy of the warranty deed executed by Allemandi are attached hereto as cummulative Exhibit Three (3) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XI.

That by letter of August 18, 1979 Allemandi acknowledged receipt of the check and documents shown as Exhibit Three (3) and provided to Respondent the current addresses of

Handley and Davis. That a copy of said letter is attached hereto as Exhibit Four (4) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XII.

That by letter of August 27, 1979 Respondent forwarded to Davis a check in the amount of $3,240 together with a warranty deed for execution by Davis. That a copy of said letter, together with a copy of said check, and a copy of the warranty deed executed by Davis are attached hereto as cummulative Exhibit Five (5) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XIII.

That by letter dated August 27, 1979 Respondent forwarded to Handley a check in the amount of $3,240 together with a warranty deed for execution by Handley. That a copy of said letter, together with a copy of said check and a copy of the warranty deed are attached hereto as cummulative Exhibit Six (6) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XIV.

That on or about September 24, 1979 Respondent delivered to Billy Brumfield a check in the amount of $1,027.68 which check represented the proceeds due Billy Brumfield from the sale of the Walthall County property less payment made to Ravenhorst Funeral Home, Inc. for the funeral expenses of Bert Brumfield contrary to the original agreement by Respondent. That a copy of said check is attached hereto

as Exhibit Seven (7) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XV.

That on September 26, 1979 Billy Brumfield executed a warranty deed conveying Billy Brumfield's 1/5 interest in the Walthall County property to Respondent. That a copy of said warranty deed is attached hereto as Exhibit Eight (8) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XVI.

That all of the deeds executed into Respondent were filed in the Chancery Clerk's office for the County of Walthall on or about September 26, 1979.

XVII.

That Respondent willfully and deliberately misrepresented the actual value of the property and the outstanding offer to purchase by Barrett at a time in which Allemandi, Handley, Davis, and Billy Brumfield were acting in good faith reliance upon Respondent to act on their behalf in handling the transfer of the subject property to Barrett, and constituted an attempt by Respondent to defraud Allemandi, Handley, Davis and Billy Brumfield.

XVIII.

That at all times during the transfer of said property Allemandi, Handley, Davis and Billy Brumfield were advised by Respondent that said property was being conveyed to Barrett by Respondent and at no time did intend for this property to be transfered directly to Respondent.

XIX.

That Respondent failed to advise Allemandi, Handley, Davis or Billy Brumfield of the value of said property or the value of the timber or of the oil, gas and mineral interest on said property even though Respondent had prior knowledge of the value of such interest.

XX.

That on or about September 24, 1979 Respondent was contacted by B. P. Tillery, hereinafter referred to as Tillery, for the purpose of executing an oil, gas and mineral lease for Respondent's interest in the subject property, but at no time did Respondent advise Allemandi, Handley, Davis or Billy Brumfield of the contact by Tillery.

XXI.

That Respondent owed a fiduciary duty to Allemandi, Handley, Davis and Billy Brumfield to represent to them the actual value of said property and to be honest and truthful in all negotiations conducted on their behalf.

XXII.

That thereafter on October 15, 1979, Respondent executed an oil, gas and mineral lease to Tillery covering all of Respondent's interest in the subject property. That a copy of said lease is attached hereto as Exhibit Nine (9) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XXIII.

That on November 13, 1979 a Bill of Complaint was filed against Respondent in the Chancery Court of Walthall County,

Mississippi on behalf of Allemandi and Handley seeking to cancel the executed deeds, establish a constructive trust, recover against the trustee and compel an accounting by said trustee. That a copy of said Bill of Complaint, excluding exhibits, is attached hereto as Exhibit Ten (10) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XXIV.

That on November 29, 1979 an Amended Bill of Complaint was filed against Respondent which added Davis as a complainant. That a copy of said Amended Bill of Complaint, excluding exhibits, is attached hereto as Exhibit Eleven (11) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XXV.

That a trial was held upon the allegations contained in the Amended Bill of Complaint and on November 17, 1981 a Final Decree was entered in said cause finding against Respondent. That a copy of said Final Decree is attached hereto as Exhibit Twelve (12) and made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XXVI.

That Respondent appealed the decision of the Chancery Court of Walthall County, Mississippi to the Supreme Court of Mississippi, which decision was ultimately affirmed by this Court without written opinion.

XXVII.

That Complainant alleges the facts to be that the foregoing described conduct of Respondent amounts to violations of certain Disciplinary Rules of the Code of Professional Responsibility of the Mississippi State Bar, hereinafter called DR, approved by the Supreme Court of the State of Mississippi, together with the statutory oath and duties of attorneys as outlined in certain sections of the Mississippi Code of 1972, annotated, (1983 Supp.) in the following particulars:

(A) DR1-102(A)(1, 4 and 6) which provides that a lawyer shall not violate a Disciplinary Rule; engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; or engage in any other conduct that adversely reflects on his fitness to practice law.

XXVIII.

That as indicated by the above mentioned Exhibit One (1) the Committee on Complaints has assessed as costs and expenses incurred during the investigation which preceded the filing of this Formal Complaint the sum of $329.16. That a true and correct copy of the investigatory expense bill as approved by the Committee on Complaints is attached hereto as Exhibit Thirteen (13), and is made a part hereof by reference as fully and to the same extent as if copied herein in words and figures.

XXIX.

That Complainant is entitled to recover of and from Respondent the above mentioned sum of $329.16 plus the cost and expenses occasioned by the litigation of this Formal Complaint.

WHEREFORE, PREMISES CONSIDERED, Complainant prays that this its Formal Complaint be received and filed, and that process or notice as required by law shall issue unto Respondent; that Respondent as required by law shall plead, answer or demur hereto but not under oath, answer under oath being hereby specifically waived; and that upon a final hearing on the merits of this Formal Complaint, that the Tribunal shall enter such discipline against Respondent as the Tribunal deems proper under the circumstances pursuant to Rule 8 of the Rules of Discipline for the Mississippi State Bar, and that Respondent shall be ordered to pay the above mentioned sum of $329.16 plus the cost and expenses occasioned by the litigation of this Formal Complaint.

That if Complainant has prayed for wrong, improper or insufficient relief then Complainant now prays for such further relief, general or special, to which Complainant would be entitled in a Court of Equity.

Respectfully Submitted,

MISSISSIPPI STATE BAR

BY: s/s Andrew J. Kilpatrick, Jr.
Andrew J. Kilpatrick, Jr.
Complaint Counsel
620 North State Street
Jackson, MS 39201

STATE OF MISSISSIPPI

COUNTY OF HINDS

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the above said County and State, Andrew J. Kilpatrick, Jr., duly appointed Complaint Counsel of the Mississippi State Bar, who upon oath first duly administered by me, affirmed that the matters and facts set out in the above and foregoing Formal Complaint are true and correct as therein stated, and when stated upon information and belief, that he verily believes the same to be true.

s/s Andrew J. Kilpatrick, Jr.
Andrew J. Kilpatrick, Jr.
Complaint Counsel

SWORN TO AND SUBSCRIBED BEFORE ME this 10th day of July, 1984.

s/s Angela Kay Cook
Notary Public

MY COMMISSION EXPIRES: July 29, 1987

APPENDIX J

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared

BILLIE BROOKS BRUMFIELD

who, after being duly sworn, did depose and say:

> I am Billie Brooks Brumfield, the aunt of H. Alva Brumfield, III. The lawsuit styled Elizabeth B. Allemandi and Lucy B. Handley vs. H. Alva Brumfield, III, et al., Number 6451 in the Chancery Court of Walthall County, Mississippi, involved a family matter between myself and my nephew. My nephew was never my lawyer; he never occupied a fiduciary relationship with me, either actual or quasi; he was never guilty of any misconduct involving fault, deceit, or misrepresentation to me; and he never occupied any actual or quasi relationship involving any fiduciary duty.
>
> I will not testify in person or by deposition in any further proceedings, nor will I participate in any way in any further proceedings involving H. Alva Brumfield, III, nor do I wish any action taken by any court or regulatory body against him. I have given this affidavit of my own free will.
>
> s/s/ Billie Brooks Brumfield
> Billie Brooks Brumfield

SWORN TO AND SUBSCRIBED before me, Notary Public, this 9th day of October, 1984.

s/s (illegible)
Notary Public

STATE OF COLORADO

COUNTY OF GUNNISON

BEFORE ME, the undersigned authority, personally came and appeared

ELIZABETH BRUMFIELD ALLEMANDI SWAFFAR

who, after being duly sworn, did depose and say:

> I am Elizabeth Brumfield Allemandi Swaffar, the aunt of H. Alva Brumfield, III. The lawsuit styled Elizabeth B. Allemandi and Lucy B. Handley vs. H. Alva Brumfield, III, et al., Number 6451 in the Chancery Court of Walthall County, Mississippi, involved a matter between my family and my nephew. My nephew was never my lawyer; he never occupied a fiduciary relationship with me, either actual or quasi; and he never occupied any actual or quasi relationship involving any fiduciary duty.
>
> I will not testify in person or by deposition in any further proceedings, nor will I participate in any way in any further proceedings involving H. Alva Brumfield, III, nor do I wish any action taken by any court or regulatory body against him. I have given this affidavit of my own free will.
>
> s/s Elizabeth B. Allemandi Swaffar
> Elizabeth B. Allemandi Swaffar

SWORN TO AND SUBSCRIBED before me, Notary Public, this 2nd day of November, 1984.

s/s (illegible)
Notary Public

My Commission Expires July 12, 1988

COMPARATIVE ANALYSIS OF SANCTIONED CONDUCT

CASE	ATTORNEY CONDUCT	SANCTION IMPOSED
Mississippi State Bar Assoc. v. Strickland, 492 So.2d 567, (Miss. 1986)	Misappropriation and imbezzlement of $25,000.00 in client's funds.	Three year suspension.
Mississippi State Bar Assoc. v. A Mississippi Attorney, 489 So.2d 1081 (Miss. 1986)	Charging excessive fee in connection with righting of a will for a small estate.	Private reprimand.
An Attorney v. Mississippi State Bar Assoc., 481 So.2d 297 (Miss. 1985)	Civil trespass constituting unprofessional conduct.	Private reprimand.
Myers v. Mississippi State Bar Assoc., 480 So.2d 1080 (Miss. 1985)	Deliberate abandonment of criminal defendant at critical stage of trial.	Two years suspension.
Clark v. Mississippi State Bar Assoc., 471 So.2d 352 (Miss. 1985)	Misappropriation of client's funds.	Disbarment.
Sanders v. Mississippi State Bar Assoc., 466 So.2d 891 (Miss. 1985)	Conflict of interest.	Public reprimand.

Exhibit "A"

COMPARATIVE ANALYSIS OF SANCTIONED CONDUCT
(continued)

CASE	ATTORNEY CONDUCT	SANCTION IMPOSED
Pitts v. Mississippi State Bar Assoc., 462 So.2d 340 (Miss. 1985)	Failure to establish trust fund for client's funds; failure to file accounting in spite of requests; misrepresentation to client and chancellor about funds.	Thirty days suspension. (One hundred, eighty days suspension ruled unduly harsh.)
A Mississippi Attorney v. Mississippi State Bar Assoc., 453 So.2d 1023 (Miss. 1984)	Verbal confrontation including profane language with opposing party.	Private reprimand.
Rhodes v. Rhodes, 420 So.2d 759 (Miss. 1982)	Contempt of Court.	None.
Netterville v. Mississippi State Bar, 397 So.2d 878 (Miss. 1981)	Surreptitious taping of telephone conversations.	None.
Harris v. Mississippi State Bar Assoc., 393 So.2d 1307 (Miss. 1980)	Misrepresentation made to client with regard to applicable fees.	One year suspension.
Mississippi State Bar v. Phillips, 385 So.2d 943 (Miss. 1980)	Conviction of nine federal felony counts or moral turpitude.	Disbarment.

COMPARATIVE ANALYSIS OF SANCTIONED CONDUCT
(continued)

CASE	ATTORNEY CONDUCT	SANCTION IMPOSED
In re Fox, 296 So.2d 701 (Miss. 1974)	Misconduct in handling of collections in stock purchases for client.	Four months suspension. (Attorney's age, abilities, past good reputation and promise for future work considered.)
In re Vance, 275 So.2d 90 (Miss. 1973)	Grand larceny.	Disbarment.
In re Prisock, 244 Miss. 427, 143 So.2d, 434 (Miss. 1962)	Fraudulent staging of automobile wreck to defraud insurance company.	Disbarment.
Bennett v. State, 211 So.2d 520 (Miss. 1968)	Conviction of receiving stolen goods.	Disbarment.
In re Marshall, 138 So.2d (Miss. 1931)	Blackmail.	Disbarment.
Sherman v. State, 108 So.2d 205 (Miss. 1959)	Imbezzlement.	Disbarment.

COMPARATIVE ANALYSIS OF SANCTIONED CONDUCT
(continued)

CASE	ATTORNEY CONDUCT	SANCTION IMPOSED
In re Denman, 79 So.2d 536 (Miss. 1955)	Imbezzling client's money; false title opinion.	Disbarment.
In re Poole, 76 So.2d 850 (Miss. 1955)	Conviction of assault.	Disbarment.